

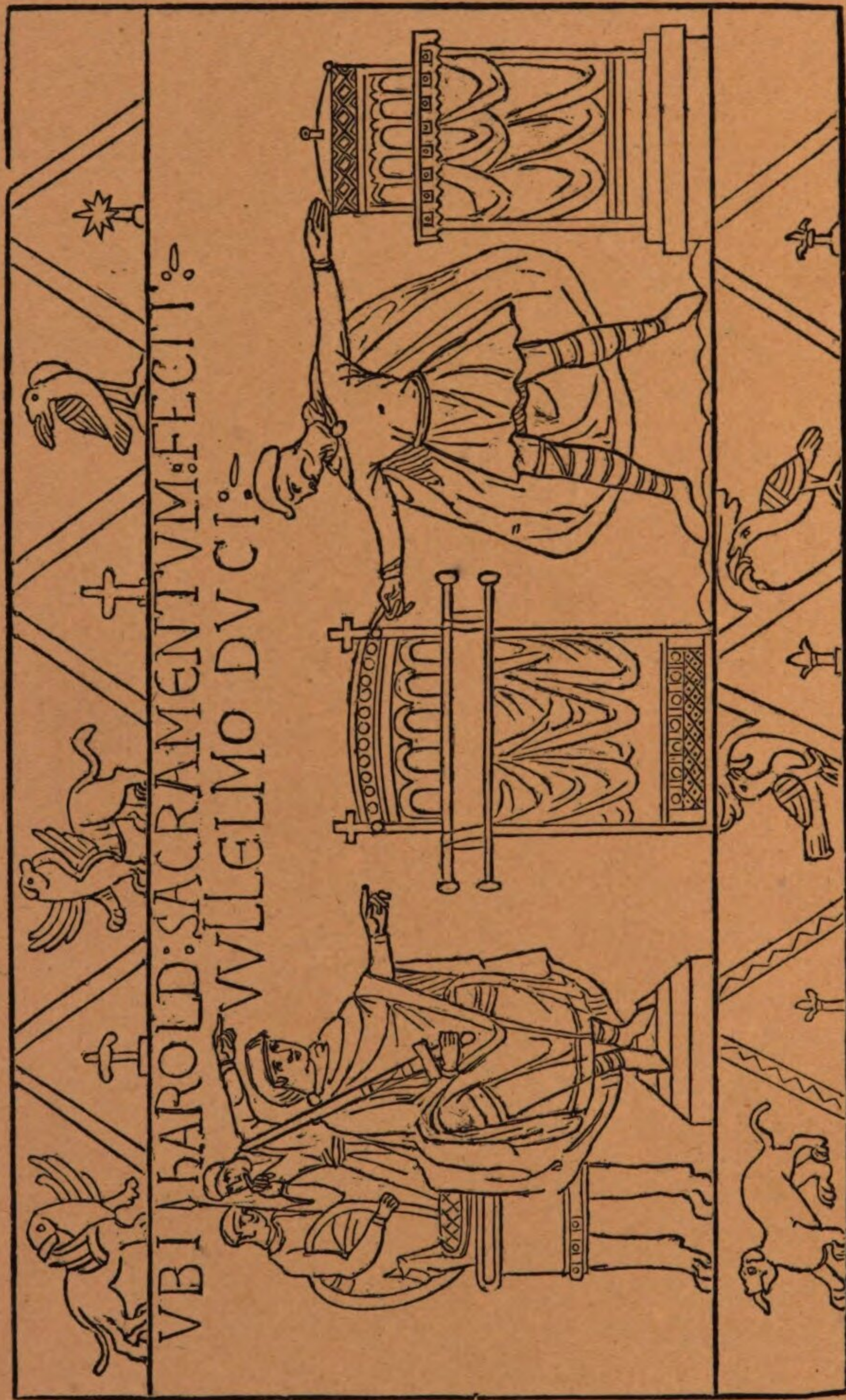
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OATHS;

THEIR ORIGIN, NATURE,

AND

HISTORY.

By JAMES ENDELL TYLER, B. D.,

RECTOR OF ST. GILES' IN THE FIELDS,

AND

LATE FELLOW OF ORIEL COLLEGE.

As by the rare and reverent use of Oaths their dignity is upheld and their obligations kept fast; so by the frequent and negligent application of them, by the prostituting them to every purpose, their respect will be quite lost, their strength will be loosed, they will prove unserviceable to public use.

ISAAC BARROW.

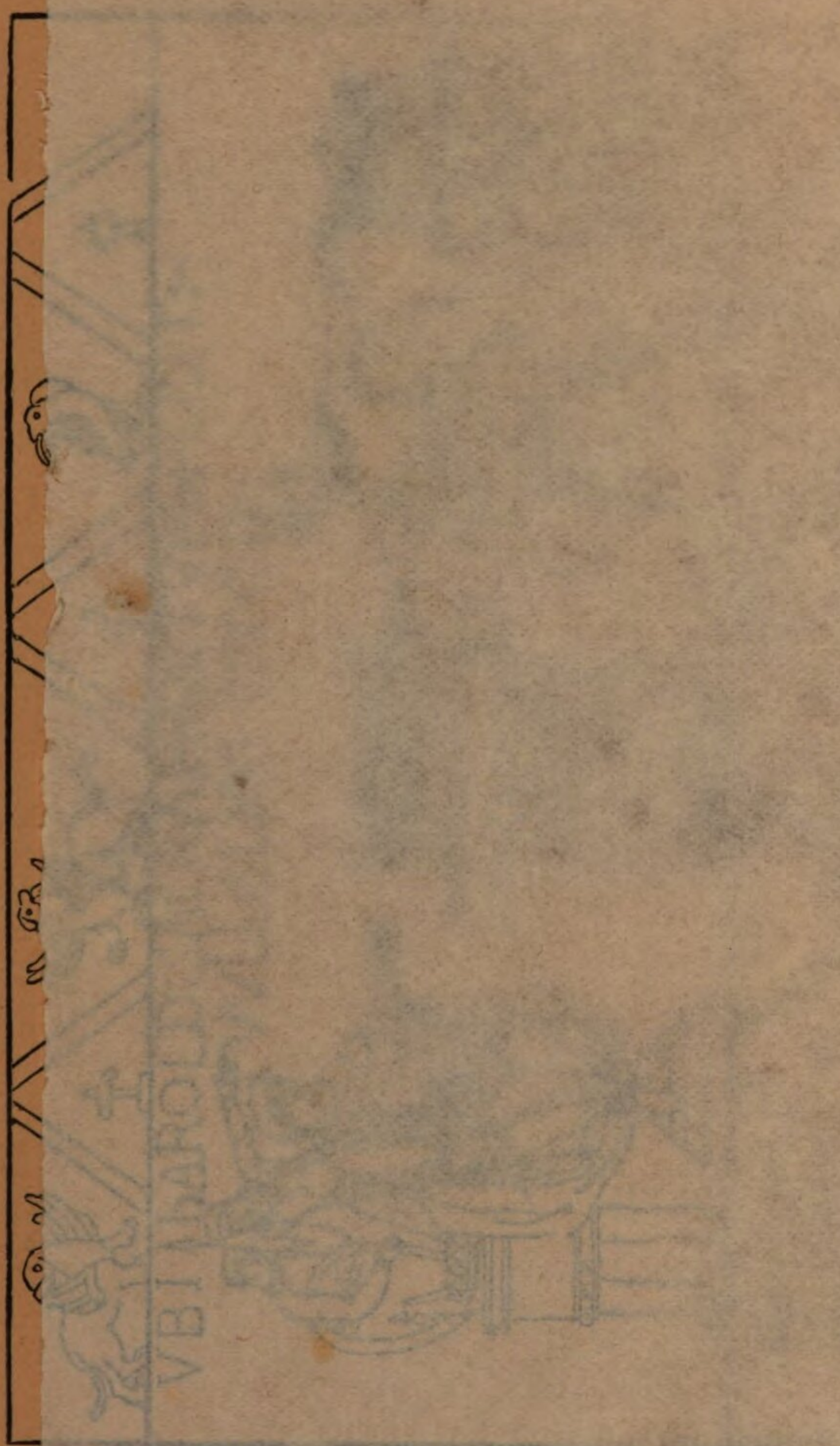
THE SECOND EDITION.

LONDON:

JOHN W. PARKER, WEST STRAND.

M.DCCC.XXXV.

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CHARLES JAMES,

LORD BISHOP OF LONDON,

WITH FEELINGS OF SINCERE GRATITUDE AND REVERENCE,

THESE PAGES ARE INSCRIBED,

BY HIS FAITHFUL AND HUMBLE SERVANT,

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REPORT

OF THE

1. After the return to the Board of Directors
of the report of the Committee on the
subject of the proposed amendment to the
constitution of the Board, the Board has
decided to accept the amendment in the
form proposed by the Committee. The
amendment is as follows: "The Board
of Directors shall have the right to
appoint and remove the officers of the
company, and to determine the powers and
duties of such officers."

2. The Board has also decided to
authorize the Committee on the subject
of the proposed amendment to the
constitution of the Board to prepare
a report on the subject of the proposed
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Board, and to submit the same to the
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Board at its next meeting.

PREFACE
TO
THE SECOND EDITION.

IN the course of the last Session of Parliament, the House of Lords appointed a “Select Committee to inquire into the expediency of substituting a Declaration in lieu of Oaths in certain cases.” To many, probably, the province assigned to this Committee might appear to have been confined within too narrow limits. Such a measure, however, must have been in itself a source of satisfaction and hope to every one who takes an interest in the subject, and is duly impressed with its importance. The Committee sate repeatedly; and after the examination of some gentlemen whose evidence seems to have fully justified the practical alterations which their Lordships recommended, the Report annexed to this Preface was the result of their first labours.

EARLY in the present Session, the Noble Chairman of the late Committee (His Grace the Duke of

Richmond) introduced a Bill, founded upon their Lordships' Report. To this measure, as far as it goes, I heartily wish good success; though I cannot but regard it as falling short even of so extensive an abolition of Oaths as the evidence before their Lordships would have warranted. Indeed, were it not for the great practical benefit secured by the proposed law as it is already framed, I should have been inclined to express my regret that the Bill (in point of Christian duty) did not proceed on another, and that a more true principle. I readily admit that the vastness and complexity of the subject would naturally suggest dangers to be apprehended from a different course, and might have recommended the present mode—the progressive eradication of Oaths from our system—as the more practicable and safe. Otherwise I should have preferred the adoption of such a principle of legislation as would in the first instance have substituted Declarations instead of Oaths in all cases not specifically excepted in the new law. Consistently with the fundamental principles which I have endeavoured to establish in the following work, the recognition of an Oath should be the exception, the prohibition of Oaths should be the rule. Nor am I without hope, that after the subject shall have been more maturely considered, and at no

very distant date, this view may yet, approve itself to our Legislators. Meanwhile I gratefully hail the present Bill, as a very promising and encouraging commencement of a better order of things among us. And of this I am sure, that no one practically acquainted with the difficulties which surround this subject on every side, would desire any other than a gradual and cautious progress in legislation.

In several very extensive departments, the Noble Duke's Bill would authorize the substitution of a Declaration, instead of the Oaths now required. The Lords of the Treasury would be enabled to dispense with Oaths in the transactions of the Custom-house, Excise, Post-office, of the Taxes and Stamps, the Woods and Forests, the Army and Navy Pay-offices, Chelsea and Greenwich Hospitals, Board of Trade, &c. By this single enactment, Oaths almost beyond calculation in point of number may be entirely abolished. The Universities, moreover, and all other Bodies Corporate and Politic, are enabled to adopt the same substitution of a Declaration in lieu of an Oath or Affidavit. The Oaths of Churchwardens and Sidesmen, and of all persons acting in Turnpike Trusts, are also abolished. The same temporal pains and penalties in all cases of such substitution, will be incurred by any person making an untrue Decla-

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ration, as persons are now liable to in cases of wilful and corrupt perjury.

The Bill provides for the continuance of the Oath of Allegiance; and expressly excepts from its operation all judicial proceedings, whether in the more solemn courts of justice, or before magistrates. I would have said that the Bill left those Judicial Oaths precisely as they were before, had it not been for my conviction that by the very act of abolishing swearing in other cases, the Oaths in the Courts of Justice will be clothed with a more solemn and sacred character. But although their Lordships have purposely abstained hitherto from inquiry into the state of Oaths in our Courts of Justice and before Magistrates, and though I fully acquiesce in the hope which their Lordships have expressed*, (a hope in which I ventured to indulge a year ago,) yet I cannot but wish also that the consideration of this important branch of the subject may be entertained by the Legislature†.

Whilst, in unison with a very large body of my countrymen, I hail these first-fruits with sincere gratitude, and cannot too much admire the deliberation and caution, united with an honest determination

* See the close of their Lordships' Report, p. xix. of this Preface.

† Especially with reference to parochial proceedings before Magistrates; in which the mass of false-swearing is really dreadful.

to eradicate acknowledged abuses, with which these proceedings are evidently carried on; I must repeat that *even on the principles by which their Lordships desire to be guided*, the Bill falls short of that full measure of improvement which the Report and the evidence would have led me to anticipate. There are some classes of Oaths which I could have wished sincerely that the Noble Duke had included in his present Bill; and which I would still hope may not ultimately be exempted from its beneficial operation; and there is at least one recommendation of the Committee itself which I think most advisable to be adopted: for the omission of which, indeed, I can account only on the ground of accident or oversight.

I have stated in the body of this work, my conviction, that the administration of voluntary affidavits (itself a prolific field of perjury,) is already illegal; (p. 69,) but it is not generally considered in the light of a misdemeanor. The Sixth Recommendation of the Committee would have provided a remedy for this evil, had it been adopted into the new Law, “that all persons administering or taking any Oath not warranted by Law, be subject to a penalty.” It would, I humbly conceive, be expedient to subject such persons to a penalty, *by positive enactment*. And the evidence of Mr.

Hobler, both on the extent of the evil, and on the ignorance widely prevalent as to the illegality of the practice, would alone justify such an enactment; though other conclusive testimony is not wanting.

Among other Oaths, for the abolition of which I cannot but regret that the Noble Duke's Bill does not provide, I am induced at present to specify only two classes in particular. The Oaths at Elections of Members of Parliament, and the Oaths required to be taken in the case of Pawnbrokers' Duplicates. With regard to the latter, I am desirous of observing, that though the facility of swearing to the loss of duplicates is productive of much evil, yet the fault is not (as I have inadvertently implied p. 69,) to be attributed to the magistrates, but to the legislature. By statute (39 & 40 Geo. III., c. 99, s. 16), it is made compulsory on pawnbrokers to furnish the forms of these affidavits, and equally compulsory upon the justices to swear the parties to the truth of them. The evidence before the Lords' Committee, both as to the vast numbers of these affidavits, (with the trifling amounts of the sums claimed, the property at issue being on an average not more than about 3s.) and also as to the adequate security which would be given by a Declaration without any Oath at all, seems to call for legislative interference.

With regard to the other class, the Oaths now required at Elections, though I could speak from my own painful experience, yet I would rather content myself with suggesting, that evidence should be taken at least in one House of Parliament, as to the indecency, and confusion, and uproar, in the midst of which the Oaths are generally hurried over, and in many cases too by persons, whose coarseness and levity appear to be in direct contrast with the solemnity of an appeal to Heaven.

Whether any measures can be now adopted for the suppression, or the diminution of so grievous an evil, I must leave for those to determine, who have undertaken the correction of the abuse of Oaths in other departments*. For myself, I cannot discover any real advantage whatever, in behalf of the purity of elections, gained by the present prostitution of this solemn appeal to the Deity; at least, in any way sufficient to compensate for the outrage done to the religious and moral feelings of good Christians, and the dreadful temptations held out by the system to wilful perjury. I would

* The Lords will have done much by passing the Bill in its present state. May we not hope that the House of Commons will confer an additional benefit on the country by substituting Declarations instead of the Oaths now exacted at our elections—a department peculiarly its own?

humbly suggest, that the mere signature of his name and place of abode by the Elector, would afford at least equal security with the Oath as at present administered.

After a careful revision of my treatise as it was first published, and a candid examination of the remarks upon it, which have appeared in several periodicals, I am confirmed in my conviction that the principles advocated here are founded in truth, and (as far as that important document goes,) they have been recognised in their Lordships' Report. Almost every position which I ventured to make, has been confirmed by the witnesses already examined before the Lords' Committee; whilst many individuals, whose opinion is most valuable, have borne very gratifying testimony to the correctness of my views, both with regard to the magnitude and extent of the evils actually flowing from the present practice in England, and also as to the expediency of a remedial legislative enactment in some cases, and in others of increased attention on the part of those to whom the administration of our laws is confided.

BEDFORD SQUARE,

March 11, 1835.

FIRST REPORT

FROM THE

*SELECT COMMITTEE OF THE HOUSE OF LORDS,
ON THE SUBSTITUTION OF A DECLARATION
IN LIEU OF OATHS.*

ORDERED TO REPORT,

THAT the Committee, in directing their attention to the important subject of Oaths, as they are at present employed for the purpose of discovering the truth or ensuring the performance of duty, have been strongly impressed with a sense of the obligation incumbent upon the Legislature of this Country, to remove from it a reproach under which it has too long justly laboured, of a prevailing inadvertency to the solemn and sacred nature of Oaths, owing in part to the forms in which they are conceived, partly to their frequency, and partly to the levity and indecency with which they are too often administered. It is too obvious to need demonstration, that the requiring of Oaths on so many trivial occasions, especially, as has been well remarked, in fiscal matters, and in the qualification for petty offices, has the effect of making them cheap in the minds of the people, and of diminishing the respect which is paid to them when they are resorted to in matters of more serious importance. In a still greater degree must this injurious effect be produced where Oaths are taken by parties who do not fully understand what it is that they swear to; and the case is still worse where a person swears to the

truth of that which he cannot certainly know to be true, or which he knows not to be literally and exactly true ; or where he swears beforehand that he will perform certain duties which he knows cannot be performed, or which will not be expected at his hands. These cases are of actual and frequent occurrence in the administration of Oaths to persons admitted to the freedom of corporations, to persons passing their accounts, and to the members of some collegiate and eleemosynary foundations. The Committee cannot hesitate to lay down the position, that recourse ought never to be had to the sanction of an Oath where it can safely be dispensed with ; that it is not justifiably used where the object for which it is employed is not of sufficient importance to warrant a direct and solemn appeal to the Deity ; nor in any case, however important, where those objects can be equally well attained by any other means ; yet so far is it from being the case that the legislature of this country has kept in view the positions here laid down, that a large proportion of the Acts passed in every session direct the administering of an Oath, and in too many cases for purposes of the most trivial kind.

The Committee feel it incumbent upon them to recommend that for the future this point should be specially attended to, and that no Bill should be suffered to pass your Lordships' House requiring the administration of an Oath, except in cases where it shall manifestly appear that the security sought for cannot be attained by means of a declaration, with penalties attached to falsehood. " Let the law," to use the words of an eminent writer, " continue its own

sanctions ; but let it spare the solemnity of an Oath. And where, for want of something better to depend upon, it is necessary to accept men's own word or own account, let it annex to prevarication penalties proportioned to the public mischief of the offence."

But it is not enough to guard against the future increase of an evil which has long been of such extent and magnitude as to require the most serious consideration and the most prompt correction. The legislature is undoubtedly bound, not only to forbear for the time to come from imposing unnecessary and frivolous Oaths, but also to take measures for the gradual diminution and ultimate abolition of those which, from a want of due attention to the principles laid down above, have been already imposed to an almost indefinite extent.

At the same time, in our endeavours to remove an abuse which has insinuated itself into almost all our institutions, and which bears upon so many of our political and social relations, it is manifestly right that we should proceed with great caution and deliberation. In restricting the use of Oaths within its proper limits, we must be careful not to remove nor weaken any real security for the discovery of truth, or the performance of public duty. The committee have therefore abstained from entering upon the subject of Oaths employed in the administration of justice, although they are of opinion that this class of Oaths would admit of some diminution in number, and of great improvement as to the form in which they are conceived, and the mode in which they are too frequently administered. They have abstained also from going at

large into the question of Oaths taken on admission to offices and franchises of various kinds, although they are persuaded that, upon a careful inquiry, but little objection will be found, either in principle, or from past experience, to the abolition of by far the greater number of those which are at present administered.

The Committee entertain the same opinion with respect to Oaths which bind the parties who take them to the observance of local statutes and customs ; but this also is a branch of the subject which they have deemed it prudent to reserve for future consideration. In the mean time they are prepared to recommend the adoption of certain measures for diminishing the existing evil, to which, as it appears to them, no objection can reasonably be made, except, perhaps, that they are less vigorous and decided than the magnitude of the evil may seem to require.

The Act of 1 & 2 W. 4, c. 4, has very considerably lessened the number of Oaths taken in the department of customs, by substituting a declaration for an Oath, except in certain cases specified in the Act. It has appeared to the Committee, that in some, if not all of the cases so excepted, a declaration or satisfactory proof would be sufficient ; but the evidence on this point was not so conclusive as to produce an entire unanimity of opinion in those who heard it. It will be seen that there exists also a considerable difference of opinion between the witnesses who gave evidence as to the safety and expediency of dispensing with the Oaths which are taken by persons receiving pay or pensions for services in the army or navy. The Committee think it highly desirable that the Oaths which are not

considered to be necessary in one branch of the service should, if possible, be dispensed with in the other. But they have deemed it on the whole most prudent, with respect both to these and to other public departments, to content themselves with recommending, in the first instance, that authority should be given to the Lords of His Majesty's Treasury to dispense with Oaths in all cases where it may appear to them that it can be done without prejudice to the public interests. An opportunity will thus be afforded of ascertaining, by actual experiment, how far it will be safe to proceed, and of mitigating the existing evil step by step.

With the same view, looking to the difficulty and hazard of interfering, by any legislative measure, with the statutes and customs of corporate and collegiate bodies, the Committee are inclined to recommend that a general permission be given to all such bodies to substitute at their own discretion, declarations or affirmations in the place of the Oaths now required by their own charters or statutes respectively, and to alter the subject matter of such Oaths, so as may be requisite to obviate the necessity of calling upon any person to affirm that which is not literally and strictly true, or to promise that which he will not be able to perform.

Many of the Oaths taken before Magistrates in quarter or petty sessions, might, as it appears to the Committee, be very well dispensed with; but as some of these may be thought to come within the description of judicial Oaths, they have forbore at present from making them the subject of particular inquiry.

They are, however, prepared to express a decided opinion, that neither on these occasions nor on any

other ought accounts of receipts and expenditure to be verified upon Oath, because if they are properly kept, they admit of a much more satisfactory and less objectionable proof, by examination and comparison with vouchers.

Although the Committee have for the present abstained from considering the numerous class of Oaths which are required of persons entering upon an office or franchise, yet there is one of that description which seems to demand immediate alteration. Churchwardens are now compelled upon entering into office to swear that they will faithfully perform all its duties according to law; and yet it is perfectly well known that some of these duties are such as it is not possible for them to discharge, in the present state of society, without the most serious inconvenience. Accordingly, they are not only not expected to observe their Oath in these particulars, but they are sometimes expressly cautioned not to do so, and the consequence is that little or no respect is in too many cases paid to the obligation of their Oath in other branches of their official duty which are essentially important and easy of performance. The Committee recommend that a declaration, properly drawn up with reference to the actual state and practice of the ecclesiastical law, should be substituted for the Oath now taken by churchwardens.

The Committee deem it incumbent upon them to direct your Lordships' particular attention to the evidence given by Mr. Hobler, the Lord Mayor's Clerk, from which it appears that a practice has prevailed among the city magistrates, of administering what are termed Voluntary Affidavits, sometimes (though less

frequently now than formerly) respecting matters of the most trivial kind. This practice, which prevails also in other parts of the kingdom as well as in London, it appears is not yet discontinued, although it has been repeatedly declared to be illegal by the highest Law Authorities. The impropriety and inexpediency of leaving the occasion of administering an Oath to the discretion of a Magistrate are so manifest, that the Committee cannot hesitate to recommend that the practice should be positively prohibited, and that a penalty should be laid upon every person who shall administer or take any Oath not warranted by law.

Before the Committee proceed to recapitulate the points to which they confine their recommendations in this First Report, they cannot forbear from observing that in those cases where it may be deemed necessary to retain the use of Oaths care should be taken to avoid their needless repetition. This will be a fit subject for future inquiry and deliberation should your Lordships, as it is hoped will be the case, resume the consideration of this important question in the next session of Parliament.

Another evil which cries loudly for reform, is the indecent mode of administering Oaths, and the consequent want of reverence in taking them, which too often disgrace our Courts of Justice. Although the Committee have not yet gone into Evidence upon this point they do not scruple to advert to it, as being too notorious to be denied; and they cannot help expressing a hope that some remedy for this evil will be devised by those learned and venerable persons under whose cognizance it more immediately falls, and who are most competent to deal with it.

Upon the whole, the Committee are prepared to close this their First Report with the following recommendations :

1. That the Lords of the Treasury be empowered to authorize and direct the substitution of a Declaration in lieu of an Oath, if they shall think fit, in all cases, not being of a judicial nature, relating to any of the public departments.
2. That the same power be given to the Universities, to all Corporations, and Chartered Bodies.
3. That no accounts should be required to be verified by Oath.
4. That a Declaration be substituted for the Oath now taken by churchwardens, according to a Form to be settled by the Dean of the Arches and the King's Advocate General.
5. That the Penalties which are now by law attached to Perjury shall attach to wilful Falsehood, in the case of false Declarations or Affirmations substituted for Oaths.
6. That all persons administering or taking any Oath not warranted by law be subject to a Penalty.

And the Committee have directed that the evidence taken before them, with an appendix and index thereto, be laid before your Lordships.

PREFACE

TO

THE FIRST EDITION.

THE following Treatise had been designed, and was in a forward state of preparation for the press, before the Bishop of London announced in the House of Lords, his intention to bring the subject of Oaths, as now administered in England, under the notice of Parliament; when his sentiments were cordially hailed by the Lord Chancellor. The effect of this announcement on my mind was far from discouraging. I received it as an intimation that the present time opened a favourable opportunity to any one who believed that he was able to assist in throwing light on this important, but ill-understood subject. It warned me, indeed, of a fact, which under other circumstances might have deterred me from carrying my design into execution—that the powers of master-minds would be brought to bear on the questions which I had been pursuing; but I was

encouraged, nevertheless, by a hope, that if the result of my labours were now made public, they might not be altogether fruitless.

In publishing these pages, I am anxious not to be understood as offering a theoretical system, complete in all its parts, and exhausting the subject either in its principles or its details. Were some one of more adequate abilities and greater leisure to undertake such a work as would be worthy of a place among the lasting productions of the age, (and certainly the subject would amply deserve the best thoughts, and the time of the most able among our writers,) it would be a source of much satisfaction to me, were I allowed to hope that my own researches had been in any way made subservient to such an undertaking. My object is altogether practical: and it will be fully secured if I shall have contributed in any measure to excite among Christians an interest in the subject more commensurate with its moral and religious importance, than now seems generally to prevail; and shall have been able to assist others in forming a right judgment on the present state of oaths

among us. I entertain no doubt, that inquiry, if rightly conducted, must, under God's blessing, lead to good.

To many of my friends I am gratefully indebted for advice and assistance; and although this is not the place for expressing my thanks to them individually, I must be allowed to make one exception, because I could not otherwise satisfy my own sense of what is due from me, on a point which must be interesting to us all. In the British Museum, not only was I readily supplied with such of its rich stores as I could myself inquire for; not only was every facility afforded me of carrying on my researches in my own way; but most valuable information, new clues, and important suggestions, were voluntarily and kindly offered me; and a lively interest was shown in the success of my pursuit, such as was equally honourable to the officers of that institution, and beneficial and gratifying to myself. This spirit appeared to reign throughout the establishment, and I shall always feel indebted to every member of it, to whom I made any application, or with whom I had

any intercourse. Still, from Sir Henry Ellis, and Mr. Panizzi, I cannot withhold my especial acknowledgments. The extent and depth of their knowledge seemed to be equalled only by the pleasure and satisfaction which they felt in imparting it.

J. E. T.

24, BEDFORD SQUARE,

January 30, 1834.

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OATHS.

CHAPTER I.

INTRODUCTORY.

THE practical questions on which I have endeavoured, in the following treatise, to throw some light, are chiefly these three:—

First: Are Oaths, in themselves, lawful to a Christian? or, are they altogether prohibited by the Gospel?

Secondly: If oaths are in themselves lawful, are they, as at present administered and taken in England, calculated to promote truth and justice? and are they agreeable to the spirit of the Religion which we profess?

Thirdly: If any alterations in our system of oaths should appear desirable, on what principles, and by what means, may such changes be most safely and satisfactorily effected?

The discussion of these questions I originally intended to reserve, till the reader had been put in possession of such historical information on the subject, as I had been able to glean. Afterwards, however, becoming apprehensive that such an

arrangement might, in effect, throw these questions into the back-ground, and make them appear subjects of secondary consideration (whereas my desire was, that every other part of the work should bear more or less directly on their elucidation), I resolved to enter upon them at once, after a few preliminary remarks.

The reader then will observe, that the treatise is divided into three parts.

In the first, having traced oaths to their origin, and offered some reflections on their essential characteristics, I proceed to investigate in succession, those three practical points of inquiry ; the importance of which, whether to society or to its individual members, will not probably be doubted ; and each of which demands a serious, calm, and unprejudiced examination.

In the second portion, I have attempted to trace the history of Oaths, from the first mention of them in the Bible, through different ages and countries, down to the present time. The facts and arguments introduced in this division of the work, may not perhaps seem, every one equally, subservient to the main object ; but I have good hope that, whilst the greater part of them may prove to be generally interesting, merely as incidents illustrative of various passages in history, they are collectively calculated to assist us in taking a correct view of all the chief subjects of our investigation.

To this part, I have annexed an historical dissertation on Perjury, with reference both to its moral guilt, and to its punishment as a crime against the State.

For the third portion, I have reserved such discussions, and such insulated facts and anecdotes connected with our subject, as might have been thought to impede the progress of our inquiry, had they been introduced into the body of the work.

No one, by reading this treatise, will be made more sensible of its imperfections than I am already : and most sincerely do I acknowledge my regret, that the task has not fallen on one able to conduct the inquiry in all its bearings in a manner more worthy of its great importance and true character. I trust, however, that my mind has been influenced throughout, by the single desire of finding the truth ; and in the practical application of the result of my inquiries, of following only as the truth might seem to lead me by the hand. I may be allowed to add, that in the remarks and suggestions which I have ventured to offer on the present state of Oaths among us in England, the principle by which I have been guided is this :—that whilst change, generally speaking, is in itself an evil, and is therefore never to be adopted lightly,

or for its own sake; nevertheless it is the office not of hatred but of love,—not of unkindness, but of friendship,—not of rashness, but of judgment,—first, to inquire with diligence for the safest and least painful remedy of any evil under which the objects of our care and regard may be labouring, and then to recommend the cure with tenderness, but with honesty.

CHAPTER II.

ORIGIN OF OATHS.

It is well observed by an ancient writer*, that would men allow Christianity to carry its own designs into full effect; were all the world Christians, and were every Christian habitually under the influence of his Religion in principle and in conduct, no place on earth would be found for OATHS;—every person would, on all occasions, speak the very truth, and would be believed merely for his word's sake: every promise would be made in good faith, and no additional obligation would be required to ensure its performance.

When entire reliance on any individual's credit is intended to be expressed, we often hear a phrase employed asserting that 'his word is equally good with his bond;' and in a Christian's mind, the love of truth, for its own sake, is tantamount to every other consideration. The highest Authority, too, that ever spake on earth, has pronounced that whatever is *more than this*,—whatever goes beyond the simple statement of the truth,—*cometh of evil*†. Our Lord does not say (as some have

* Hilarius, Comment. Matt. v. 33. This is also the sentiment of many other early Christian writers.

† Matt. v. 37. Some, however, regard our Lord's words in this passage, as referring solely to the ordinary com-

misunderstood him to say), that whatever goes further than the mere passing of one's word is itself sinful, but that its source is evil; it originates in what is in itself bad. And undoubtedly the evil in which oaths take their rise is the prevalence of falsehood and wrong, and the consequent prevalence of suspicion and distrust*. It is because we do not place confidence in the veracity of men in general, when they profess to speak the truth; it is because we cannot rely upon their good faith, when they make a bare promise, that we are driven to seek for something more satisfactory to ourselves, by imposing upon them a more binding responsibility than that of their mere word.

Such an obligation has been supposed in every age and country of the world to be afforded by the interposition of an OATH. Through all the diversified stages of society, from the lowest barbarism to

munication between man and man. The earliest and most celebrated writers of the Christian church, seem to me to have considered them as applicable to all Oaths. Whichever of these two views we adopt, His words equally refer us to the *origin* of the evil. Augustin (De Verb. Apost. Jac. v.) takes the view adopted in this chapter.

* Hesiod represents "Strife," the Malignant Deity, to have been the parent of a thousand evils, enumerating a long and black catalogue; and, as though he would put that end to the climax, beyond which nothing further could be conceived, he adds, "And that which most of all is the bane of mortal men, should any voluntarily incur the guilt of perjury,—AN OATH."—*Theogon.* 230, 231.

the highest cultivation of civilized life,—where the true religion has been professed, no less than where paganism has retained its hold, recourse has been had to Oaths as affording the nearest approximation to certainty in evidence, and the surest pledge of the performance of a promise*. Even in the present state of society, among professed Christians, however it may be lamented as a proof of the deficiency of sound religious principle, an oath seems to be considered necessary, as impressing the mind of almost every one, with a more awful sense of the guilt and danger of falsehood, and of the religious obligation to speak the very truth,—the whole truth, and nothing but the truth†. Whoever offends by falsehood, after binding himself by an oath to speak the truth, offends (as Archdeacon

* “Hercus,” or the God of Oaths, is said to be the son of Eris, or Contention; and fables tell us, that in the golden age, when men were strict observers of the laws of truth and justice, there was no occasion for oaths, nor any use made of them. But when they began to degenerate from their primitive simplicity, when truth and justice were banished out of the earth, when every one began to take advantage of his neighbour by cozenage and deceit, and there was no trust to be placed in any man’s word, it was high time to think of some expedient, whereby they might secure themselves from the fraud and falsehood of one another: hence had oaths their origin.—Potter’s *Antiq.*, b. ii., c. 6.

† The Solicitor-General, Murray, in the celebrated case of “Omychund and Barker;” to which we shall have occasion frequently to refer, says, “No country can subsist a twelvemonth, where an oath is not thought binding; for the want of it must necessarily dissolve society.”

Paley remarks) with a high hand, in the face of God, and in defiance of the sanctions of religion.

For a more full and very satisfactory and interesting view of this subject, I refer the reader to the sentiments of Heineccius*. They will be found in Part III., Section A.

* This treatise was in a forward state of preparation for the press, before I had an opportunity of making myself acquainted with the sentiments of that learned and sensible writer: I have, therefore, preferred making an extract, rather than attempt to interweave his views with my own. The dissertation from which that extract is made, and which he calls *A Treatise on the Lubricity or Slippery Uncertainty of the Suppletory Oath*, is a work well deserving a careful examination.

CHAPTER III.

DEFINITION OF AN OATH.

THE first point in our proposed inquiry, after tracing an oath to its true origin, would seem to be to settle its definition. And this is not so readily and easily determined as it might, at first sight, be supposed to be. A difficulty presents itself to us on the very threshold, involving, in some measure, our own national practice in England of employing the *imprecatory* form, and bearing directly on the objections of one of those few classes in our community, who refuse to bind themselves by the oath prescribed by our law. Dr. Paley*, seems not to have been aware of this difficulty, nor of the distinction made conscientiously by many excellent Christians. His definition of an oath runs thus ; “ It is the calling upon God to witness, *i. e.*, to take notice of what we say, AND it is invoking his vengeance, or renouncing his favour, if what we say be false, or what we promise be not performed.”

It is somewhat curious, that the Archdeacon's next words are “ Quakers and Moravians refuse to swear upon any occasion.” This is a mistake. The fact is, that whilst Quakers object to an oath in any form, the Moravians would not refuse to swear, were that form of oath observed which the

* Moral Philos., b. iii., part 1, c. 16.

first part of Dr. Paley's definition specifies,—namely, the solemn appeal to God as the witness of our words; but they shudder at the thought of imprecating, under any circumstances, directly, and in their own words, the vengeance of the Supreme Being upon their souls; an imprecation implied in the latter member of his definition. They, consequently, refuse our form of swearing, “So help me, God,” SO, upon condition of my speaking the truth, and not otherwise.

This distinction is not recognised in an Act lately passed, 9 Geo. IV. c. 74, for the better administration of justice in India; which is the more surprising, because the law was made under the auspices of so able and so well-informed a person as the then Chairman of the Board of Control; it is usually called Mr. Wynne's Act. Its provision, as to the point before us, is couched in these terms.—“And be it enacted, that every Quaker or Moravian, who shall be required to give evidence in any case whatever, civil or criminal, shall, instead of taking an oath in the usual form, be permitted to make his or her solemn affirmation or declaration, in the words following, that is to say,—I, A. B., do solemnly, sincerely, and truly declare and affirm.” This confusion, for such it is, is the more remarkable, because Acts of Parliament had already most clearly recognised the distinction. By 8 Geo. c. 6, the Quakers were

allowed, for certain purposes, instead of taking an oath, to make a declaration in the very words, word for word, of the form prescribed by Mr. Wynne's Act for both Quakers and Moravians; whereas, by 22 Geo. II. c. 30, the Moravians were relieved, by having the form of attestation substituted which no Quaker would admit. This law is intituled "An Act for encouraging the people, known by the name of the 'Unitas Fratrum,' or United Brethren, to settle in his Majesty's Colonies in America." Its enactment is this;—"Every person, being a member of the Protestant Episcopal Church, known by the name of 'Unitas Fratrum,' or United Brethren, which Church was formerly settled in Moravia and Bohemia, and [members of which] are now in Prussia, Poland, Germany, the United Provinces, and also in his Majesty's dominions, who shall be required, on any lawful occasion, to take an oath, shall, instead of the usual form, be permitted to make his solemn affirmation in these words,—I, A. B., do declare, in the presence of *Almighty God*, the *witness of what I say*." This is to all intents and purposes an *oath*. It is, I think, matter of regret, that this distinction, so evidently recognised in former Acts, should have been overlooked in Mr. Wynne's Bill. It is not a mere verbal distinction. The difference is real and practical. No one could make the Moravian's attestation, unless he acknowledged the Deity as the moral Governor of the

world. The Quaker's affirmation an Atheist might make without any inconsistency.

The case of the Separatists will be found in Part III., Section B.

Phillips, indeed, in his beautifully luminous and able *Treatise on the Law of Evidence*, seems to take it for granted, that "our law (like that of most other civilized nations) requires a witness to believe, not only that there is a God and a future state of rewards and punishments, but also that, by taking the oath, he *imprecates* the divine vengeance upon himself, if his evidence shall be false*." But, as we shall often be reminded, this view is neither universally taken, nor is it insisted upon by the jurisprudence of all European countries. M. Merlin, having stated that, by the ancient law, the members of two religions in France had the privilege of taking their own peculiar oath, Jews and Anabaptists, observes of the latter, "their religion only allows them to say 'Yes,' to the form of oath administered by the judge, and forbids them *to lift their hand*, because they believe that would be to provoke the Lord from the highest heaven; an act which, according to them, would be an impiety more fitted to destroy the credit of him who should be guilty of it, than to merit confidence†."

Conceiving that the reader might desire to review

* Phillips, c. 3.

† Répertoire Universel et Raisonné de Jurisprudence.

for himself, the chief definitions of an oath, adopted either by modern or ancient writers, I have put together in the Third Part, Section C, so many of those which have offered themselves to my notice, as I thought might be of general interest.

All the definitions which I have been able to examine, may conveniently be arranged under two heads: first, such as contain no expressed imprecation; and, secondly, such as embrace, in more or less explicit language, an imprecatory clause.

Before we adopt or reject any one of those definitions, or substitute any other of our own, I am desirous of soliciting the reader's attention to one or two observations on a question, which appears to me to be of prime importance; and yet, to have been often regarded in a mistaken point of view.

I cannot but consider it in itself an erroneous supposition, and a cause of practical mischief, to consider either that GOD will become a witness of our words *in consequence* of our calling Him to witness them, or that His judgment will fall upon us *in consequence of* our invoking it. This error, it is to be feared, derives much countenance and encouragement from our present practice, and the language which we usually employ. The only true state of the case is altogether opposed to this supposition: and we ought habitually to impress upon ourselves and others, that God *is and must*

be a witness of all we do and say, without our appealing to Him to become so, and that He *will* punish falsehood and wrong, without any invocation on His vengeance made by ourselves. He does not need us to draw His attention to our words, or to the secrets of our hearts: He does not need our permission to punish, should we dare to utter with our lips, what our conscience knows to be wrong.

The object of the Form of Adjuration should be to point out this; to show that we are not calling the attention of God to man, but the attention of man to God,—that we are not calling upon Him to punish the wrong-doer, but on man to remember, that He will.

On these principles, (which will probably approve themselves to most persons,) if it be deemed necessary to fix upon a precise Definition, I must exclude from mine whatever would imply more on the part of the juror than a pledge, that he is speaking under a solemn sense of the presence of the Deity, the witness of our words and actions, the moral Governor of the world, the Judge of mankind, and the just avenger of falsehood and wrong. It was on similar principles, that the early Christians used to say, “Whatever we affirm, we do so as in the presence of God; and that, to us Christians, is the most solemn oath.”

It is not, indeed, always necessary in a moral dissertation, for the writer formally to adopt precise

definitions. It is often quite enough practically, if he takes care to employ the same word in the same sense throughout. I am, however, the rather inclined to propose one in this place, because some of those definitions which have been most current, especially in modern* times, appear to have done much to countenance and propagate the erroneous views to which I have just referred. The following definition, then, seems most nearly to coincide with the view which I have been led by inquiry and reflection to take of the essential nature of an oath. "AN OATH IS AN OUTWARD PLEDGE GIVEN BY THE JUROR THAT HIS ATTESTATION [OR PROMISE] IS MADE UNDER AN IMMEDIATE SENSE OF HIS RESPONSIBILITY TO GOD."

Without improperly anticipating what we must examine hereafter, I may, in this early stage of our inquiry, express my opinion, that whether the distinction of the Moravians be too finely drawn or not, were our English oath to be reconstructed, a form of adjuration might be devised, which would appear to the generality of persons unobjectionable—more reverential and pious, and, at the same time, equally secure. The persons sworn

* I have never found either the definition of an oath, or the form of an oath *implying the imprecatory clause*, acquiesced in by the early Christians. The ages when the most dreadful imprecations were used, and a multiplication of them was relied upon as a greater security for the truth, were the ages of religious darkness and corruption.

would simply declare their sense of the presence of God as the witness of the truth, and their responsibility to Him as the Judge of mankind, leaving the punishment of falsehood to His righteous judgment, without expressly imprecating, in any case, the Divine vengeance on themselves.

CHAPTER IV.

ARE OATHS LAWFUL TO A CHRISTIAN?

HAVING thus endeavoured briefly to trace oaths to their origin, and to take a correct view of their real nature; we must now enter upon the first of those three practical questions which have been already stated in the introductory chapter, and ascertain whether oaths are, in themselves, lawful to a Christian, or whether they are altogether forbidden by the Gospel*.

* First, however, in order to obviate any objection against the application of our arguments in this inquiry, to the case of our present form of oath in England, (an objection, which possibly may arise, in consequence of my definition excluding the imprecatory clause which that form of oath retains,) I would be allowed to observe, that I mean our English legal oath to be included in this inquiry. Indeed, I intend to include every form which might be required by the legislature of any country, in which Christians live, provided neither its words, nor the ceremonies attending its administration, involve a renouncement of our Christian faith, or are derogatory to the honour of God's holy name. It would be an unfair inference from my reasoning, to regard me as condemning all imprecatory forms of adjuration as *unlawful*, because I consider them less agreeable to the Spirit of the Gospel, and the practice of primitive times, than those forms of oaths which exclude any express imprecation. We might, in many instances, wish that things were otherwise, and yet not condemn them as they are. Some laws it might be highly desirable for a Christian legislature to alter, but which, as long as they remain unchanged, it would be sinful in a Christian to

Objections to taking an oath in any form, are by no means of recent origin in our country. Quakers, indeed, are generally supposed to be the only or the first persons to have objected, from religious scruples, to take an oath, even when required to do so by a judge in the furtherance of justice; but this is by no means the case. The unlawfulness of taking an oath was one of the tenets of the old Anabaptists, long before the Quakers had a name or existence in Christendom. And, in ages of our history still more remote, whilst the intolerant spirit of the times suggested a very summary method to prevent the spreading of the same error, measures were also taken to inform the people of England of the true state of the case. Whilst the Constitutions of Arundel provided that, "None shall bring into dispute the determinations of the Church concerning oaths to be taken in the ecclesiastical or temporal courts, on pain of being declared a heretic;" it was at the same time directed, that "it shall be publicly taught and preached by all, that, in judicial matters, oaths may lawfully be taken*."

Now how much soever we may disclaim the spirit of the penal clause in these Constitutions, disobey. If oaths are at all lawful, which is the question now to be examined, I cannot consider the form now prescribed by our laws so essentially objectionable, as to justify any subject who lives under the protection of those laws, in refusing to submit to it.

* *Arundel*, Lindwood, 297.

that the doctrine required by them to be taught is agreeable to the principles of Christian truth, can, I conceive, admit of no doubt at all with reasonable and well-informed men, who will patiently and calmly examine the question for themselves, with the same openness to conviction which they would entertain in any secular or philosophical inquiry; weighing the true intent and meaning of words rather than their sound, and looking to the spirit and circumstances of a command, rather than to its mere letter.

In the first place, oaths were not only tolerated among the Israelites, when the Almighty was their immediate sovereign legislator, but, in some cases, positively commanded. This fact proves, that by themselves, *in their nature*, they are not evil. For had they been intrinsically sinful, God, the author of the Mosaic Polity, would not have enjoined them*. I do not here allude to the command, “Thou shalt fear the Lord thy God, and serve him, and *shalt swear by his name*†,” because I can regard that rule as nothing more than a prohibition against swearing by any other name whatever except only the name of Jehovah; just as

* Augustin, in his Comment on St. James, uses the same argument. “If an oath had been sin, we should not have read in the Old Testament, ‘Thou shalt not forswear thyself, but shalt perform to the Lord thy oath;’ for a sin would never have been enjoined on us.”

† Deut. vi. 13.

or for its own sake ; nevertheless it is the office not of hatred but of love,—not of unkindness, but of friendship,—not of rashness, but of judgment,—first, to inquire with diligence for the safest and least painful remedy of any evil under which the objects of our care and regard may be labouring, and then to recommend the cure with tenderness, but with honesty.

blessed Founder of our faith, and his apostle, intended only to forbid all vain, and rash, and common swearing, and to reprobate the self-deceiving folly of the Jews, who called upon creatures to witness their oaths in the hope at once of deceiving those to whom they swore, and still of not incurring the guilt of perjury, seems to me a conclusion from their words altogether evident and satisfactory. That neither Christ nor his apostle intended to pronounce on the absolute unlawfulness of an oath is, I conceive, put beyond fair controversy by the very terms of their prohibition, by the example which Christ, our perfect pattern, himself set us on one of the most solemn occasions of his life upon earth, and by the conduct and words of the apostles themselves, when acting under his direction, and speaking immediately in his cause, and in his name.

Were we inquiring into the real purport of any human uninspired teacher's precept, an exception might be fairly taken against an appeal to his example as conclusive, because many of us "say, and do not." But, in the case of our Lord, this objection would be irreverence itself; whilst his example is unequivocal, and precisely to the point. When the high-priest *put him upon his oath judicially*, he broke the silence which he had previously kept, and forthwith made answer.—
" *I call upon thee* (said Caiaphas) *to swear by the*

living God, whether thou be the Christ." "I am," was, in effect, the reply; "Thou hast said*," being as much a direct answer in the affirmative, as our word "Aye," or "Yes."

This argument from the example of our Lord, seems to me so very important, and if satisfactorily established, so conclusive of the point in question, that I have been induced to throw together in the Third Part, Sect. D, the reasons that compel me to regard the interpretation which I have here given, as the only correct and sound view of the passage. And I cannot help humbly, but earnestly inviting my readers to a careful and patient examination of the chain of arguments there offered.

Can we, I would ask, conceive a more favourable opportunity to have offered itself than this, for Christ to have refused to take an oath himself, alleging its inconsistency with his spiritual kingdom, and to have delivered a prohibition against all oaths among his followers for ever? Yet, instead of intimating the slightest objection to the oath, he received it in the form in which the high-priest offered it, and swore by the living God.

St. Paul takes an oath again and again, most unequivocally, to the truth of his assertions; "God

* Matt. xxvi. 63. The Greek words are:—'Εξορκίζω σε κατὰ τοῦ Θεοῦ τοῦ ζῶντος, and Σὺ εἶπας—which our translation renders, "I adjure thee by the living God," and "Thou hast said."

is my witness^{*}”—“I invoke God as a witness on my own soul[†],” with many other instances equally clear, and equally to the point. As to the words of the apostle James, premising (as we learn from independent sources) that the Jews were in the habit of swearing by the things specified by our Lord and St. James, in the passages under consideration[‡], I will content myself with the commentary of Calvin only, which, whilst it places the doctrine of Christianity on these points, in its true light, is full of such sound and pious sentiments as may still have a beneficial effect upon our minds.

“It has been a general vice, in almost every age, to swear lightly and without consideration; such is our evil-mindedness, we do not reflect how grievous a sin it is to abuse the name of God. But because God, meanwhile, enjoins solemnly a reverence for his name, men invent different subterfuges, with a

* Rom. i. 9.

† 2 Cor. i. 23.—Ἐγὼ δὲ μάρτυρα τὸν Θεὸν ἐπικαλοῦμαι ἐπὶ τὴν ἐμὴν ψυχὴν. Augustin, in his Comment on Galatians i. 9, not only admits, but maintains, that the Apostle takes there a solemn oath, and justifies him also in doing so. The whole of that passage is well worth examination. Athanasius, too, though he strongly reprobates the custom of swearing unnecessarily, yet, when charged with designs against the Emperor, says, in his letter of defence, “I stretch forth my hand, and as I have *learned of the Apostle*, I invoke God as a witness on my own soul,” using the very words of St. Paul above quoted.

‡ See Pole's Synopsis, Matt. v. 33.

view to swear with impunity. They pretend, therefore, that no evil is done unless the name of God be expressly employed. A very old device this. Thus the Jews, when they swore by heaven and earth, fancied they did not abuse God's name, because they did not utter it. But whilst men wish to show their ingenuity in blinding the eyes of God, they do nothing but deceive themselves by their frivolous refinements and subtleties. Christ inveighed against such folly. And now James, subscribing to his Master's decree, bids us abstain from such indirect forms, because whoever swears in vain, and for a thing of nought, with whatever colour he may disguise his words, abuses the name of God. The sum is, therefore, this,—that it is not a whit more lawful to swear by the heaven or the earth, than to swear by the name of God; the reason is conveyed by Christ,—because the glory of God is engraven every where, and shines forth every where. Indeed, with no other sense or intention do men employ the names of the heaven and the earth in their oath, than they would do if they named God himself, because by such a form of language they only designate the Maker by his works."

"*The Anabaptists* (continues this learned man), act indiscreetly in condemning all oaths under plea of this passage. For neither is James discussing the subject of oaths in general, as neither is Christ

OATHS.

CHAPTER I.

INTRODUCTORY.

THE practical questions on which I have endeavoured, in the following treatise, to throw some light, are chiefly these three:—

First: Are Oaths, in themselves, lawful to a Christian? or, are they altogether prohibited by the Gospel?

Secondly: If oaths are in themselves lawful, are they, as at present administered and taken in England, calculated to promote truth and justice? and are they agreeable to the spirit of the Religion which we profess?

Thirdly: If any alterations in our system of oaths should appear desirable, on what principles, and by what means, may such changes be most safely and satisfactorily effected?

The discussion of these questions I originally intended to reserve, till the reader had been put in possession of such historical information on the subject, as I had been able to glean. Afterwards, however, becoming apprehensive that such an

arrangement might, in effect, throw these questions into the back-ground, and make them appear subjects of secondary consideration (whereas my desire was, that every other part of the work should bear more or less directly on their elucidation), I resolved to enter upon them at once, after a few preliminary remarks.

The reader then will observe, that the treatise is divided into three parts.

In the first, having traced oaths to their origin, and offered some reflections on their essential characteristics, I proceed to investigate in succession, those three practical points of inquiry ; the importance of which, whether to society or to its individual members, will not probably be doubted ; and each of which demands a serious, calm, and unprejudiced examination.

In the second portion, I have attempted to trace the history of Oaths, from the first mention of them in the Bible, through different ages and countries, down to the present time. The facts and arguments introduced in this division of the work, may not perhaps seem, every one equally, subservient to the main object ; but I have good hope that, whilst the greater part of them may prove to be generally interesting, merely as incidents illustrative of various passages in history, they are collectively calculated to assist us in taking a correct view of all the chief subjects of our investigation.

To this part, I have annexed an historical dissertation on Perjury, with reference both to its moral guilt, and to its punishment as a crime against the State.

For the third portion, I have reserved such discussions, and such insulated facts and anecdotes connected with our subject, as might have been thought to impede the progress of our inquiry, had they been introduced into the body of the work.

No one, by reading this treatise, will be made more sensible of its imperfections than I am already: and most sincerely do I acknowledge my regret, that the task has not fallen on one able to conduct the inquiry in all its bearings in a manner more worthy of its great importance and true character. I trust, however, that my mind has been influenced throughout, by the single desire of finding the truth; and in the practical application of the result of my inquiries, of following only as the truth might seem to lead me by the hand. I may be allowed to add, that in the remarks and suggestions which I have ventured to offer on the present state of Oaths among us in England, the principle by which I have been guided is this:—that whilst change, generally speaking, is in itself an evil, and is therefore never to be adopted lightly,

occasions ; and (however inveterate may have become the abuse of the name of the HOLY ONE in this respect, still) to exert all their authority in limiting the administration of oaths to cases only of necessity.

In the next place, the full current of Christian antiquity, through its simplest, and purest, and best times, runs direct and strong against the multiplication of even judicial oaths. I do not mean, that the first Christians absolutely refused on all occasions to testify to the truth by an oath (I maintain the contrary) ; but they required the necessity of the case to be proved. They appear to have adopted practically, the rule prescribed by Hierocles, “Never to swear, except in cases of great importance and necessity ; when the magnitude of the question at issue should call for some extraordinary interference ; and when no other means appeared of securing the ends of justice*.”

The early teachers of the Gospel-faith employed their pens and tongues, on all occasions, against the growth of so pernicious a practice, as that of multiplying oaths unnecessarily†.

* Hierocles on the Golden verses of Pythagoras.

† See Tertul. de Idol. c. 23, 11 et 17. “Præscribit Christus non esse jurandum.” “Taceo de perjurio quando ne jurare quidem liceat.”

Tertullian lived in the second century. His works have been lately very ably examined, and employed in illustration of the ecclesiastical history of the second and third centuries, by the present Bishop of Lincoln, who refers to

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or for its own sake; nevertheless it is the office not of hatred but of love,—not of unkindness, but of friendship,—not of rashness, but of judgment,—first, to inquire with diligence for the safest and least painful remedy of any evil under which the objects of our care and regard may be labouring, and then to recommend the cure with tenderness, but with honesty.

CHAPTER II.

ORIGIN OF OATHS.

It is well observed by an ancient writer*, that would men allow Christianity to carry its own designs into full effect; were all the world Christians, and were every Christian habitually under the influence of his Religion in principle and in conduct, no place on earth would be found for OATHS;—every person would, on all occasions, speak the very truth, and would be believed merely for his word's sake: every promise would be made in good faith, and no additional obligation would be required to ensure its performance.

When entire reliance on any individual's credit is intended to be expressed, we often hear a phrase employed asserting that 'his word is equally good with his bond;' and in a Christian's mind, the love of truth, for its own sake, is tantamount to every other consideration. The highest Authority, too, that ever spake on earth, has pronounced that whatever is *more than this*,—whatever goes beyond the simple statement of the truth,—*cometh of evil*†. Our Lord does not say (as some have

* Hilarius, Comment. Matt. v. 33. This is also the sentiment of many other early Christian writers.

† Matt. v. 37. Some, however, regard our Lord's words in this passage, as referring solely to the ordinary com-

misunderstood him to say), that whatever goes further than the mere passing of one's word is itself sinful, but that its source is evil; it originates in what is in itself bad. And undoubtedly the evil in which oaths take their rise is the prevalence of falsehood and wrong, and the consequent prevalence of suspicion and distrust*. It is because we do not place confidence in the veracity of men in general, when they profess to speak the truth; it is because we cannot rely upon their good faith, when they make a bare promise, that we are driven to seek for something more satisfactory to ourselves, by imposing upon them a more binding responsibility than that of their mere word.

Such an obligation has been supposed in every age and country of the world to be afforded by the interposition of an OATH. Through all the diversified stages of society, from the lowest barbarism to

munication between man and man. The earliest and most celebrated writers of the Christian church, seem to me to have considered them as applicable to all Oaths. Whichever of these two views we adopt, His words equally refer us to the *origin* of the evil. Augustin (De Verb. Apost. Jac. v.) takes the view adopted in this chapter.

* Hesiod represents "Strife," the Malignant Deity, to have been the parent of a thousand evils, enumerating a long and black catalogue; and, as though he would put that end to the climax, beyond which nothing further could be conceived, he adds, "And that which most of all is the bane of mortal men, should any voluntarily incur the guilt of perjury,—AN OATH."—*Theogon.* 230, 231.

might more correctly fall under a subsequent head, when we come to consider the propriety of oaths of office, I cannot refrain from contrasting these sentiments, whether we regard them as implying the positive prohibition, or steady discountenance of clerical* or other oaths on the part of the Church†, with the practice which I have witnessed with much pain, of subjecting the venerable Primate of all England, every year, to the necessity of taking an oath to discharge faithfully the duties of his office as President of the Society for the Propagation of the Gospel in Foreign Parts. The same oath must be administered to the Bishops before they can act as Vice-Presidents. This is, indeed, enjoined by the Charter of the Corporation ; but it is, I humbly think, unnecessary, and, therefore, on the principles which I trust we have already established, unjustifiable. But this is only one instance, and by no means the most objectionable instance, of the administration of oaths required in our country,

* Pope Pascal II., about the commencement of the eleventh century, in a letter to the Archbishop of Polonia, urges the duty of never taking an oath, except on great and urgent occasions, and when there exists a kind of necessity.—Lab: Concil:

† I am by no means disposed to maintain the reasonableness of the distinction which would exempt clergymen from such oaths as laymen ought to be compelled to take. In the instance we are now examining, I maintain, that the oath of the President of such a Society, whether he were a clergyman or a layman, would be unnecessary.

Paley remarks) with a high hand, in the face of God, and in defiance of the sanctions of religion.

For a more full and very satisfactory and interesting view of this subject, I refer the reader to the sentiments of Heineccius*. They will be found in Part III., Section A.

* This treatise was in a forward state of preparation for the press, before I had an opportunity of making myself acquainted with the sentiments of that learned and sensible writer: I have, therefore, preferred making an extract, rather than attempt to interweave his views with my own. The dissertation from which that extract is made, and which he calls *A Treatise on the Lubricity or Slippery Uncertainty of the Suppletory Oath*, is a work well deserving a careful examination.

CHAPTER III.

DEFINITION OF AN OATH.

THE first point in our proposed inquiry, after tracing an oath to its true origin, would seem to be to settle its definition. And this is not so readily and easily determined as it might, at first sight, be supposed to be. A difficulty presents itself to us on the very threshold, involving, in some measure, our own national practice in England of employing the *imprecatory* form, and bearing directly on the objections of one of those few classes in our community, who refuse to bind themselves by the oath prescribed by our law. Dr. Paley*, seems not to have been aware of this difficulty, nor of the distinction made conscientiously by many excellent Christians. His definition of an oath runs thus ; “ It is the calling upon God to witness, *i. e.*, to take notice of what we say, AND it is invoking his vengeance, or renouncing his favour, if what we say be false, or what we promise be not performed.”

It is somewhat curious, that the Archdeacon's next words are “ Quakers and Moravians refuse to swear upon any occasion.” This is a mistake. The fact is, that whilst Quakers object to an oath in any form, the Moravians would not refuse to swear, were that form of oath observed which the

* Moral Philos., b. iii., part 1, c. 16.

sanction : and thirdly, an evil which seems to be a natural consequence resulting from these two, a recourse to that sanction in common conversation ; —an appeal to heaven on trifles, and in every-day intercourse.

With regard to the first evil, we may observe that no principle is more generally established by reasoning and experience, than the common adage, “Familiarity breeds contempt.” And I would confidently appeal to the experience of every one, whether by the administration of oaths, as at present witnessed in our Courts of Justice, or our Offices of Police, any religious reverence is promoted towards the Great Being whose name is used, or any sense cultivated of the awful responsibility by which a sworn man is bound. On the contrary, does not the respect with which we once contemplated an appeal to the Omniscient and Omnipotent One, gradually but rapidly diminish, as we become more familiar with the ceremony by its constant repetition ? This effect may, undoubtedly, be owing in some measure to the manner in which the ceremony is conducted ; and to this we shall refer hereafter : at present, we allude to the diminished reverence, as a consequence of its frequency*. And if this be the case even in a Court

* Since this chapter was first written, I have carefully read the treatise of Michaëlis to which we must again refer. His testimony, incidentally given to the point we are here

of Justice, how much more widely and generally must this disregard of the Holy Name of God be expected to prevail through the bulk of the people, in consequence of the multiplication of oaths every where, increased as (with few exceptions) they have been a thousand-fold among us, by new enactments of the legislature beyond all proportion to the increase of our population, or to the greater complication of our affairs. Probably the operation of the poor-laws alone, in all their various ramifications, causes more oaths to be sworn in England now, than the entire administration of justice formerly required to be taken in the whole country. And the facility, the utter recklessness, with which paupers will swear, often ignorantly rather than wilfully, as to their settlement, whatever is required of them by the parish officers, or whatever their own wishes lead them to assert, will scarcely be believed, except after personal experience: but it supplies a melancholy proof of the low condition to which the religious sanction of an oath is sunk among us.

examining, is clear and direct. "Our civil punishments of perjury [in Germany] do not stand, certainly, on a better footing than this" [he is speaking of the Roman punishment, or rather, as he most incorrectly infers, the non-punishment of perjury in Rome]; "only they are now necessary, considering that honesty and the influence of Religion are no longer so universal among mankind, and *that oaths have in a great measure lost their respect, in consequence of their pernicious multiplication.*"——
MICHAELIS'S *Commentary on the Laws of Moses.*

This, I am induced to believe, would scarcely be the case, were the population taught,—as I am persuaded the Legislature might, by salutary regulations, gradually teach them,—to regard an oath as a solemn appeal to God, to be allowed only in cases of necessity, and to be made, if at all, only in causes requiring the solemnity of judicial investigation; and then to be taken with a solemnity corresponding to the awfulness of the majesty of HIM who is invoked to witness the truth.

2. The second mischief we mentioned arising from our present unhappy practice in the administration of oaths, was a proportionate undervaluing of the truth, when a bare affirmation is made without the additional sanction of such an immediate appeal to Heaven. This undervaluing of a simple declaration is seen in a twofold point of view,—in the person whose words purport to convey the truth, and in the person to whom they are addressed,—a sort of general disparagement of that “yea” and “nay” of Christians, beyond which the great Legislator and Judge, from whom lieth no appeal, has pronounced every thing to originate in a poisoned well-spring. If the legislature of England, by its solemn enactments, pronounces and declares, that no credit is to be given to a man’s word, however seriously pledged, unless it be confirmed by an oath, though the most trivial question of everyday life be the subject; if Justice, even when en-

for himself, the chief definitions of an oath, adopted either by modern or ancient writers, I have put together in the Third Part, Section C, so many of those which have offered themselves to my notice, as I thought might be of general interest.

All the definitions which I have been able to examine, may conveniently be arranged under two heads: first, such as contain no expressed imprecation; and, secondly, such as embrace, in more or less explicit language, an imprecatory clause.

Before we adopt or reject any one of those definitions, or substitute any other of our own, I am desirous of soliciting the reader's attention to one or two observations on a question, which appears to me to be of prime importance; and yet, to have been often regarded in a mistaken point of view.

I cannot but consider it in itself an erroneous supposition, and a cause of practical mischief, to consider either that GOD will become a witness of our words *in consequence* of our calling Him to witness them, or that His judgment will fall upon us *in consequence of* our invoking it. This error, it is to be feared, derives much countenance and encouragement from our present practice, and the language which we usually employ. The only true state of the case is altogether opposed to this supposition: and we ought habitually to impress upon ourselves and others, that God *is and must*

be a witness of all we do and say, without our appealing to Him to become so, and that He *will* punish falsehood and wrong, without any invocation on His vengeance made by ourselves. He does not need us to draw His attention to our words, or to the secrets of our hearts: He does not need our permission to punish, should we dare to utter with our lips, what our conscience knows to be wrong.

The object of the Form of Adjuration should be to point out this; to show that we are not calling the attention of God to man, but the attention of man to God,—that we are not calling upon HIM to punish the wrong-doer, but on man to remember, that HE will.

On these principles, (which will probably approve themselves to most persons,) if it be deemed necessary to fix upon a precise Definition, I must exclude from mine whatever would imply more on the part of the juror than a pledge, that he is speaking under a solemn sense of the presence of the Deity, the witness of our words and actions, the moral Governor of the world, the Judge of mankind, and the just avenger of falsehood and wrong. It was on similar principles, that the early Christians used to say, “Whatever we affirm, we do so as in the presence of God; and that, to us Christians, is the most solemn oath.”

It is not, indeed, always necessary in a moral dissertation, for the writer formally to adopt precise

definitions. It is often quite enough practically, if he takes care to employ the same word in the same sense throughout. I am, however, the rather inclined to propose one in this place, because some of those definitions which have been most current, especially in modern* times, appear to have done much to countenance and propagate the erroneous views to which I have just referred. The following definition, then, seems most nearly to coincide with the view which I have been led by inquiry and reflection to take of the essential nature of an oath.

“AN OATH IS AN OUTWARD PLEDGE GIVEN BY THE JUROR THAT HIS ATTESTATION [OR PROMISE] IS MADE UNDER AN IMMEDIATE SENSE OF HIS RESPONSIBILITY TO GOD.”

Without improperly anticipating what we must examine hereafter, I may, in this early stage of our inquiry, express my opinion, that whether the distinction of the Moravians be too finely drawn or not, were our English oath to be reconstructed, a form of adjuration might be devised, which would appear to the generality of persons unobjectionable—more reverential and pious, and, at the same time, equally secure. The persons sworn

* I have never found either the definition of an oath, or the form of an oath *implying the imprecatory clause*, acquiesced in by the early Christians. The ages when the most dreadful imprecations were used, and a multiplication of them was relied upon as a greater security for the truth, were the ages of religious darkness and corruption.

would simply declare their sense of the presence of God as the witness of the truth, and their responsibility to Him as the Judge of mankind, leaving the punishment of falsehood to His righteous judgment, without expressly imprecating, in any case, the Divine vengeance on themselves.

CHAPTER IV.

ARE OATHS LAWFUL TO A CHRISTIAN?

HAVING thus endeavoured briefly to trace oaths to their origin, and to take a correct view of their real nature; we must now enter upon the first of those three practical questions which have been already stated in the introductory chapter, and ascertain whether oaths are, in themselves, lawful to a Christian, or whether they are altogether forbidden by the Gospel*.

* First, however, in order to obviate any objection against the application of our arguments in this inquiry, to the case of our present form of oath in England, (an objection, which possibly may arise, in consequence of my definition excluding the imprecatory clause which that form of oath retains,) I would be allowed to observe, that I mean our English legal oath to be included in this inquiry. Indeed, I intend to include every form which might be required by the legislature of any country, in which Christians live, provided neither its words, nor the ceremonies attending its administration, involve a renouncement of our Christian faith, or are derogatory to the honour of God's holy name. It would be an unfair inference from my reasoning, to regard me as condemning all imprecatory forms of adjuration as *unlawful*, because I consider them less agreeable to the Spirit of the Gospel, and the practice of primitive times, than those forms of oaths which exclude any express imprecation. We might, in many instances, wish that things were otherwise, and yet not condemn them as they are. Some laws it might be highly desirable for a Christian legislature to alter, but which, as long as they remain unchanged, it would be sinful in a Christian to

countries are withholden of fee) and clothing as men learned in the law; by occasion of the which misused indictments falleth many mischiefs in the King's people; for thence for lucre of officers, maintainers, and jurors, innocent people be wrongfully vexed and oppressed, many of the King's lieges be troubled by indictments, privily procured by malice of covetous men, when that is none action nor complaint having ground of the suit of party; many poor men which would live in rest and would be occupied in true labour, be compelled to live under tribute, and annual pensions of maintainers and jurors to eschew vexation of indictments; many folk that might get their living by occupation of lawful crafts and other true labours, cast up true business and rightful occupation, and intend in great part to get their living by *bearing of false witness in inquests*, and occupation of conspiracies. *And thus by boldness of perjury* in such falsely procured and used indictments, the dread of God's doom is forgotten, the law of God's precepts is damnably contraried and broken, while the name of God in such wrongfully-used indictments is *wittingly taken to false witness*, and the faith of Christ waxeth slack in such forsworn jurors, as though the rightful judgment of God should not punish the sin of such perjury; which misgovernance against the precept of God asketh vengeance of the people of the land, *but if* (unless) remedy be

ordained against such mischiefs; please it our Sovereign Lord the King—to make all indictments null, unless the King be a party against the trespasser*.” Some exceptions of *murder*, &c. are added.

* Wilkins, *Concilia*, 1439.

CHAPTER VII.

DOES THE PRESENT SYSTEM WORK WELL?

BEFORE I proceed to venture, as I am emboldened to do, upon an humble and respectful, but at the same time an open and undisguised appeal to the legislature as well as to the judges, and all others employed in the practical administration of the laws, it seems necessary to revert (for we have already alluded to the subject incidentally) to the practical effect of oaths as administered among us in securing the truth, where without them it would be withheld or distorted. Does the present system, however objectionable in other respects, work well in providing judges and magistrates with the real facts of the case on which they are called to adjudicate? If this be so, justice is so precious above all earthly good things which a community can enjoy (as a heathen says, "so fair is it and beautiful, as to exceed even the outgoings of the morning and evening in its loveliness"*), that, undoubtedly, if a system, however objectionable in its circumstances, is found practically to provide a kind of body-guard to her throne, we might well beware how we touched it with the tip even of a finger. But is this the fact?

* Arist: Eth: Nic: v. 1.

It is melancholy to reflect how clearly the evil propensities of our fallen nature show themselves, under similar temptations, through all the various degrees of religious darkness and light, and in every age and country of the world. In its worst tendencies, unregenerate nature is ever the same. And though the practices of one age and country may seem to the people of another, proofs of a state of immorality and folly, from which their own is free, yet the real difference often consists in a change, not from evil principles to good, but only from one modification of the same principle to another. How strikingly is this the case in the miserable expedients to which men have recourse, with a view to evade the guilt of perjury, and yet secure their own ends by falsehood! When we hear our Saviour remonstrating with his own countrymen on their folly in supposing that their wretched shifts could deceive the omniscient Searcher of hearts, we are ready to exclaim against the gross darkness which must have covered that people, “Woe unto you, ye blind guides, who say, whosoever shall swear by the temple it is nothing; but whosoever shall swear by the gold of the temple he is a debtor.” But is this folly in itself by a single shade more degrading than the subterfuges by which too many of our countrymen now attempt to deceive both themselves and justice? It is notorious, for example, not only at the Old Bailey

(though that court has given its name to this particular species of fraud) but elsewhere, that many a witness, if he can but escape the observation of the officer, and kiss his thumb instead of the book, will pledge himself to any falsehood without apprehension of incurring the guilt of perjury.

Another principle which I believe to be very commonly received, is that if the juror says nothing, no oath is taken. I know this notion was very current during the last war, when recruits were sworn as soldiers. The magistrate administered the oath in the second person, and the juror said nothing, but kissed the book, and that was not deemed a binding oath. In parts of Wales (where some of the judges who have lately, under the new system, presided at the assizes, have expressed their astonishment and painful disgust at the mass of corrupt perjury which they find witnesses altogether recklessly incurring), the oath, as a magistrate assures me, is not considered binding unless *three* fingers are laid upon the book. In the police-offices of the Metropolis, when Irish Romanists are sworn, the magistrates often compel them to cross themselves, and to kiss a book stamped with a cross*. A Jew of the present day, we are told, regards no

* It has been suggested to me by a friend, that the Irish practice of swearing by kissing a coin, originated in the circumstance of coin formerly having been stamped with a cross—but I believe the custom is of pagan origin.

oath as obligatory, unless his head is covered whilst he is sworn*. Are we one tittle less guilty of folly and wickedness than were his countrymen two thousand years ago?

On this point it would be dishonest in me, were I to conceal my opinion, (an opinion, if not originating in my present inquiry, certainly confirmed and enlarged by what has been continually brought before my mind in the course of it,) that these evasions, subterfuges, wily and deceitful distinctions, derive no inconsiderable countenance from the practical legal interpretation of the laws relating to perjury. If a man may swear to a most palpable falsehood in the witness-box in open court, and yet the law of perjury be interpreted as inapplicable to his case, because of some nice distinction, very clear and marked to learned lawyers, but not equally discernible by ordinary minds, can we wonder that men determined to be guided by their own crooked policy, and yet not entirely divested of religious fear, should have recourse to every variety of contrivance that offers itself to evade the obligation of

* I have been lately told that Jews make a distinction in this respect, when they are sworn in a house and in the open air. They consider the roof of the house a sufficient covering. I have no doubt the custom originated in a pious desire of having a veil between their head and the majesty of Jehovah; and was subsequently perverted into a cloak for perjury. They always, however, pray with their hats on, even in their Synagogues.

view to swear with impunity. They pretend, therefore, that no evil is done unless the name of God be expressly employed. A very old device this. Thus the Jews, when they swore by heaven and earth, fancied they did not abuse God's name, because they did not utter it. But whilst men wish to show their ingenuity in blinding the eyes of God, they do nothing but deceive themselves by their frivolous refinements and subtleties. Christ inveighed against such folly. And now James, subscribing to his Master's decree, bids us abstain from such indirect forms, because whoever swears in vain, and for a thing of nought, with whatever colour he may disguise his words, abuses the name of God. The sum is, therefore, this,—that it is not a whit more lawful to swear by the heaven or the earth, than to swear by the name of God; the reason is conveyed by Christ,—because the glory of God is engraven every where, and shines forth every where. Indeed, with no other sense or intention do men employ the names of the heaven and the earth in their oath, than they would do if they named God himself, because by such a form of language they only designate the Maker by his works."

"*The Anabaptists* (continues this learned man), act indiscreetly in condemning all oaths under plea of this passage. For neither is James discussing the subject of oaths in general, as neither is Christ

in question, (and who but a learned lawyer can determine its materiality?) it is not perjury, "because," says Sir Edward Coke, "it concerneth not the point in suit, and therefore in effect is extrajudicial*."

* The remarks of a most valued and learned friend on this passage, though their tendency is to show that I have in this particular, attributed more of evil to the present practice of our courts than the case warrants, are so full of sound practical wisdom, that I cannot withhold them from the reader.

"With regard to the defects or inconsistencies imputed to the law of England, in that it does not punish as Perjury false-swearing, when the juror swears only to his recollection or belief; or when the matter sworn to, is irrelevant to the point in issue, nor the breach of promissory oaths, it is to be observed, that no system of human laws extends, nor indeed can extend to all breaches of moral duty. They punish as civil offences, such only as are more tangible by law, and more peculiarly detrimental to the public weal; and then draw the line.

"The Law of England may have drawn this line too narrowly in respect of false-swearing, and it would be more consistent, and I am inclined to think advisable, to visit with some punishment the deliberate falsehood of all oaths which are required to be made to matters of fact, as is now done in the case of many required by particular statutes.

"But with regard to facts sworn according to the recollection or belief of the juror, it is impossible in most, if not in all such cases, for the judge or jury to ascertain with such a degree of certainty as would warrant criminal punishment, the degree of credulity or defect of memory which may have misled the witness.

"As to irrelevant matter sworn to, the public has a great interest in excluding, and great pains are taken to exclude

But humiliating to the minds of Christians and Englishmen as must be these reflections on the attempts made by men in a boasted state of civilization and by professed Christians, to evade the religious obligation of an oath, they do not affect us with so much pain as we feel when we are compelled to witness the dreadful extent to which perjury, direct palpable perjury, prevails among us from one end of the kingdom to another; and that not only in the ordinary and inferior offices of such matter from being introduced, as greatly tending to delay and expense, and to the distraction of those who are to decide. Such matter, if it ever slips in, is not investigated with the degree of precision which attaches to more important matter; nor has the witness the same temptation to falsehood, because such matter can rarely, if ever, produce the least degree of benefit to the party whose interest he espouses.

“Promissory oaths stand on their own grounds. A deliberate breach is undoubtedly a moral offence of equal magnitude with any other species of false-swearing. But considering the weakness, thoughtlessness, and want of resolution, to which human nature is liable, a promise sanctioned by an oath, may sometimes, at a subsequent period, be violated without the same degree of malignity, which must always attend the false-swearing to a matter of fact of the falsehood of which the party is conscious at the moment of swearing.

“I admit fully, that such considerations furnish strong grounds for the abolition of a great part of official and other promissory oaths. And with regard to such as may be retained, it is to be observed, that in cases of official delinquency the offender though not guilty of legal perjury, is yet liable to punishment for breaches of official duty, in the due observance of which the public has an interest.”

magisterial jurisdiction, but in the highest and most solemn tribunals of our country. The complaints of our judges, as to different parts of our native land in this respect, are most distressing to one's moral sense, and when we reflect on the tremendous consequences of perjury in a spiritual point of view, truly appalling. Every obligation of an oath upon the conscience, they tell us, is forgotten. Indeed one gentleman, very high in the Profession, assured me, as the result of his own observation, that not one half of those who came before him to swear affidavits, seemed to feel that they were under the slightest religious obligation to speak the truth.

On almost every circuit, the reports of trials, both in civil and criminal investigations, represent the presiding judge, in some case or other, as leaving it entirely to the jury to decide on the mass of conflicting testimony, alleging that gross perjury on matters of fact must lie at the door of the one set of witnesses or the other, and congratulating himself that it is the province of the jury, and not his, to pronounce by their verdict which of the two parties have incurred the guilt. In our police reports, scarcely one day passes without affording accumulative evidence on the same melancholy subject; and in transactions whether of a parochial nature or affecting the interests of individuals, where the value of any property, of what kind

occasions ; and (however inveterate may have become the abuse of the name of the HOLY ONE in this respect, still) to exert all their authority in limiting the administration of oaths to cases only of necessity.

In the next place, the full current of Christian antiquity, through its simplest, and purest, and best times, runs direct and strong against the multiplication of even judicial oaths. I do not mean, that the first Christians absolutely refused on all occasions to testify to the truth by an oath (I maintain the contrary) ; but they required the necessity of the case to be proved. They appear to have adopted practically, the rule prescribed by Hierocles, “Never to swear, except in cases of great importance and necessity ; when the magnitude of the question at issue should call for some extraordinary interference ; and when no other means appeared of securing the ends of justice*.”

The early teachers of the Gospel-faith employed their pens and tongues, on all occasions, against the growth of so pernicious a practice, as that of multiplying oaths unnecessarily†.

* Hierocles on the Golden verses of Pythagoras.

† See Tertul. de Idol. c. 23, 11 et 17. “Præscribit Christus non esse jurandum.” “Taceo de perjurio quando ne jurare quidem liceat.”

Tertullian lived in the second century. His works have been lately very ably examined, and employed in illustration of the ecclesiastical history of the second and third centuries, by the present Bishop of Lincoln, who refers to

Gregory Nazianzen, who lived in the fourth century, and who, (as we are told by his biographer, Gregory the Presbyter,) observed to the day of his death, his resolution never to swear, has left us a spirited poem, written expressly against the custom of swearing. In one of his images, he compares the habit to a stone rolling down a steep with increasing velocity, till at last it reaches the brow of a precipice, and then, with one bound, dashes itself into the gulf below, and that gulf is PERJURY*. “Fly from every oath,” he says. “How then shall we be believed?” “By our word, and by a life which makes our word worthy of credit.”

Augustin appears to have caught the true spirit of our Lord’s precept, and to have taken a wise and liberal, and at the same time a pious view of the whole subject.—“Avoid an oath as much as ever you can; it is better not to swear, even to the truth. By the practice of swearing, perjury is often incurred, and is always approached. It does not follow, that because the Apostle, a man most firm in the truth, has called God to witness in his

the two passages in this note, as his authority for saying, that “Tertullian seems to have considered an oath as in no case allowable.” A doubt, however, may be fairly entertained whether Tertullian is there pronouncing against all oaths, or solely against the particular heathen oath which Christians were then in the habit of taking to satisfy their heathen creditors.

* “Ὁρκου τί χεῖρον; Οὐδὲν ὥς οὐμὸς λόγος.—What is worse than an oath?—Nothing as I maintain.

fluenced by the force of a good conscience? The same punishment, consequently, which is assigned by the immortals to the perjurer, is also appointed for the liar. For those immortal powers are wont to have their anger and vengeance roused, not so much by the form of the covenanted words of an oath, as by the perfidy and malice of overreaching and fraud*.”

* At quid interest inter perjurum et mendacem.—Orat. pro. Q. Rosc. Com. 16.

CHAPTER VIII.

ARE ANY CHANGES NECESSARY?

IN venturing to offer a few suggestions, resulting from this review of the subject of our present inquiry, I first feel anxious to make a brief addition to what has already incidentally fallen from me, on the mode, or form, of taking an oath in England. The mode now universally adopted among us is *imprecatory*. In the first place, I must not refrain from giving an opinion into which I have been very reluctantly and painfully driven, that practically the mode adopted in England, of all modes either known to me before, or with which this inquiry has made me acquainted, appears (as at present generally witnessed), the very least calculated to impress on the mind of the juror, a religious sense of the awful obligation by which he is binding himself; and in numberless cases, seems to fall little short of an irreverent prostitution of the Almighty's name. In the second place, I would again observe, that whilst the mode now universally adopted among us, is *imprecatory*;—the invoking of God's vengeance in case we do not fulfil our engagement to speak the truth, or perform the specific duty, "SO help me God,"—I am not aware of this form being sanctioned by the words, or the example, either of Christ himself, or any of

his Apostles, or of those whom we regard as the most approved models of primitive Christianity. Still in some shape or other, our present is undoubtedly, a very ancient form.

How far however, it is now imperative on our Courts of Justice, to adhere to the one form, viz. that of the juror taking the book in his right hand and kissing it, together with the imprecatory clause, "So help me [or you] God," I am unable to say. In the case of *Dutton v. Colt*, i. Sid. (quoted in Atkyns's Rep. i. vol., s. 42), we have this curious fact recorded. "Doctor Owen, Vice-Chancellor of Oxford, being a witness for the Plaintiff, refused to be sworn in the usual manner, by laying his right hand on the book, and kissing it afterwards. But he caused the Book to be held up before him, and he lifted up *his right hand*. The Jury upon this, prayed the opinion of the Court, if they ought to think this testimony as strong as the testimony of any other witness; and Glin, Chief Justice, told them, that in his judgment, he had taken as strong an oath as any other witness; but he said, if he was to be sworn himself, he would lay his right hand upon the book*."

* This happened in the year 1657—The last sentence in Siderfin (not quoted by Atkyns) would lead us to suppose that this objection was by no means confined to that well-known Vice-Chancellor. He states that the Chief Justice's answer on this occasion was the same which he had made in the former case to the jury (*Oliver and Surrey*) when one of the Jurors was thus sworn.

might more correctly fall under a subsequent head, when we come to consider the propriety of oaths of office, I cannot refrain from contrasting these sentiments, whether we regard them as implying the positive prohibition, or steady discountenance of clerical* or other oaths on the part of the Church†, with the practice which I have witnessed with much pain, of subjecting the venerable Primate of all England, every year, to the necessity of taking an oath to discharge faithfully the duties of his office as President of the Society for the Propagation of the Gospel in Foreign Parts. The same oath must be administered to the Bishops before they can act as Vice-Presidents. This is, indeed, enjoined by the Charter of the Corporation ; but it is, I humbly think, unnecessary, and, therefore, on the principles which I trust we have already established, unjustifiable. But this is only one instance, and by no means the most objectionable instance, of the administration of oaths required in our country,

* Pope Pascal II., about the commencement of the eleventh century, in a letter to the Archbishop of Polonia, urges the duty of never taking an oath, except on great and urgent occasions, and when there exists a kind of necessity.—Lab: Concil:

† I am by no means disposed to maintain the reasonableness of the distinction which would exempt clergymen from such oaths as laymen ought to be compelled to take. In the instance we are now examining, I maintain, that the oath of the President of such a Society, whether he were a clergyman or a layman, would be unnecessary.

In the Old Testament, the equivalent expression, occurring two or three times, is, "The Lord do so to me, and more also." But in no one of those instances, I believe, can that form be quoted as a sound example to follow, whether we read it as the oath of Ruth, by which she voluntarily bound herself not to desert her mother-in-law, or as the form by which Eli, then lying under the sentence of Jehovah, bound Samuel to impart to him what the vision had revealed. The oath* of David is, in this point, equally irrelevant to our purpose, differing only from these two other forms in being a more circuitous mode of conveying the imprecation. All these are instances of extrajudicial oaths, and serve rather as a beacon warning us to avoid them, than a form of solemn oath prescribed for our adoption. This form of oath may be traced back, through the corrupt ages of Christianity† and the remains of heathen antiquity, up to the time of Homer; and, unhappily, we have but too frequent memorials of it in our own days, in the rash oaths to which I have already referred.

added to the words "So God you help;" and that they were regarded with some jealousy and suspicion, as savouring of popery.

* 1 Sam. xxv. 22.

† I have not found, as I have already stated, though I will by no means say there cannot be found, among the early Christians, any form of oath containing the impre-

CHAPTER VI.

PRACTICAL TENDENCY OF A MULTIPLICATION
OF OATHS.

IF we look to the practical tendency of a multiplication of oaths, independently either of Scripture doctrine or primitive testimony, the conclusion forced upon our minds will be, that our present system calls for the interference of a Christian Legislature. From the practice (unhappily, we are compelled to say our practice,) of exacting an oath on all occasions, in every state of every dispute, at every turn of every matter, civil, criminal, ecclesiastical, financial*,—equally in the investigation of the most horrid fratricide before the most solemn tribunal of the land, and in settling the most trifling squabble between two quarrelsome drunkards,—the evils naturally, if not necessarily, resulting, are great and manifold: among the rest, we may at present specify three.

First, a sad diminution of the reverence of an oath, even when duly administered by authority: secondly, a proportionate undervaluing of the simple truth, when unaccompanied by that usual

* I have the greatest satisfaction in being able to state, that numberless oaths have been very lately dispensed with in the Custom-house, by Act of Parliament, and, as I am informed by those who are most competent to judge, without any injury whatever to the revenue.

sanction : and thirdly, an evil which seems to be a natural consequence resulting from these two, a recourse to that sanction in common conversation ; —an appeal to heaven on trifles, and in every-day intercourse.

With regard to the first evil, we may observe that no principle is more generally established by reasoning and experience, than the common adage, “Familiarity breeds contempt.” And I would confidently appeal to the experience of every one, whether by the administration of oaths, as at present witnessed in our Courts of Justice, or our Offices of Police, any religious reverence is promoted towards the Great Being whose name is used, or any sense cultivated of the awful responsibility by which a sworn man is bound. On the contrary, does not the respect with which we once contemplated an appeal to the Omniscient and Omnipotent One, gradually but rapidly diminish, as we become more familiar with the ceremony by its constant repetition? This effect may, undoubtedly, be owing in some measure to the manner in which the ceremony is conducted ; and to this we shall refer hereafter : at present, we allude to the diminished reverence, as a consequence of its frequency*. And if this be the case even in a Court

* Since this chapter was first written, I have carefully read the treatise of Michaëlis to which we must again refer. His testimony, incidentally given to the point we are here

not to your recommendation to omit that part of the oath which is directly imprecatory, turning entirely, in the English oath, upon the word "so"—an objectionable, almost an insidious form of inducing an illiterate man to invoke the vengeance of the Almighty. I hold it no sufficient reason to retain the words, "So help me God," that there will still be a virtual imprecation without them. If actual imprecation shocks the conscience, even of the weaker brethren, and adds little or nothing to the sense of obligation, it is a reason for recommending an altered form."

But whatever difference of opinion may exist, as to the importance or propriety of changing the expression of the oath, I shall proceed to the next branch of our inquiry, with an assumption that on two points at least, all Christians will agree. I shall take it for granted, that every one who professes to regard the Gospel as the rule of life, will feel, First, that all unnecessary oaths should be abolished, in whatever department of Church or State they may be found; and, Secondly, that whatever oaths, after a calm and dispassionate examination of the subject in all its bearings, may still be deemed indispensable, they should always be administered with such marks of reverence and solemnity, as at once are due to the hallowed name of HIM who is invoked, and may be calculated to inspire a religious feeling of respect and a reveren-

tial awe, as well in the person sworn, as in all who witness the ceremony. At the same time, while I assume these to be sentiments generally felt, I am fully aware, that when the expediency of adopting any alteration in the present system shall be discussed, we must expect a great diversity of opinion among men of practical knowledge and sound understanding.

I am also fully sensible, that such a treatise as the present will best perform its own office by keeping within its own province; and instead of offering suggestions of specific alterations as to judicial or other oaths, my purpose is only to state the evils felt, and the principles upon which such alterations should proceed, leaving it to those who are best acquainted with the subject, to apply those principles in detail. And I may be allowed to hope, that should any recommendations appear to come from me, which ought to be left rather to those who are conversant with the details of practice in courts of law, they may not operate to prejudice the question as to the two general principles of abolishing all unnecessary oaths, and of administering with solemnity and reverence such as may yet be retained. Still I may be expected, perhaps, to enter somewhat into detail, in a few cases which have either come under my own personal experience, or have been communicated to me by men of practical knowledge: I would be understood, however,

gaged in settling a point of less value than can be estimated by the lowest coin that is named among us, will not move her hand or tongue without first witnessing an appeal to heaven, what is the natural result? Can it be any other (especially among the least educated part of mankind), than on the one hand, a comparative carelessness, a heedlessness of his own words, when a man speaks unrestrained, uninfluenced by the religious bond of an oath; and on the other hand, a proportionate distrust of another man's bare, naked word,—an incredulity, when he merely affirms or denies under the general obligation to speak the truth. Thus does the multiplication of oaths throw simple truth into the background, and pave the way for the third evil we specified,—the prevalence of rash and common swearing.

3. This evil, lamentably prevalent among us, I trace in part as one result of the multiplication of oaths administered by magistrates and in Courts of Justice, with somewhat of increased certainty, from the fact of the exact terms of our authorized form of oath being employed very generally among common swearers. Too often are our ears assailed in the streets by the very expressions used as well by a juror when swearing in his own person, as by the magistrate when administering an oath, accompanied (like the more solemn oaths in the corrupt ages of Christianity) by a volley of horrible im-

CHAPTER IX.

OATHS OF OFFICE AND VOLUNTARY AFFIDAVITS.

1. IN the first place, the usual oaths of office, in almost every department, with some exceptions perhaps, I would gladly see abandoned, and without any apprehension of the slightest neglect of duty in consequence. When the sovereign*, for the first time, formally takes upon himself the duties of his high station, on the due execution of which the constitution in church and state, the maintenance of the laws, the welfare, and even, in some cases, the existence of his people may be involved, the occasion may seem to require him to bind himself (as

* Mr. Greene, M. P. for Lancaster, was understood last session, to give notice that he should move in the course of the next session, for the abolition of all oaths of office, except those of the King, the Judges, Privy Councillors, and great officers of state.

I would here observe, that the evil tendency of promissory oaths, as well as their inutility, is forced upon us by the number of exceptions to their obligation, which casuists used to discuss and sanction. Take for example, the oath by which a person, when admitted to his freedom, swears not to divulge the secrets of the trade or mystery to which he belongs. This oath has been pronounced to be not binding "in case it hinders any greater moral good, or prevents us from discharging any duty of morality, or if the divulging of the secret cannot injure the party who required the oath, or if those already acquainted with the mystery cannot sufficiently supply the wants of men in this particular, &c."

—See Puffendorf, B. iv., c. 2.

all our kings have ever bound themselves,) by the most solemn religious sanctions to be faithful to his high trust*; and, as the correlative obligation, it may be very fit that certain of his more eminent officers and subjects should, upon the same sanctions, bind themselves to be faithful to their sovereign. There may probably be also some offices of extraordinary trust in the church or state†, which might, in the opinion of wise and good men, require an oath from those who are appointed to them; but allowing such exceptions, I would,

* That our Kings of the Anglo-Saxon race solemnly bound themselves at their coronation, *by an oath*, faithfully to discharge the duties of their high trust; and that it is a mistake to suppose (with Carte), that *they* only *promised on their royal word* to keep the three articles, which the Norman princes *swore* to observe, is shown by Lyttelton. Hist: Hen: II. The old office used at King Ethelred's coronation (he maintains) was used by the Conqueror. The words of that oath are preserved: it commences thus, "I promise in the name of Christ;" and ends, "As may the gracious and merciful God grant his mercy to me and to you." The three articles were,—to protect the Church and all Christian people in peace; to put down all rapine and injustice; and to observe equity and mercy in all judgments.

† I am fully aware of the difficulty, if the principle is admitted, of limiting its application. But I have a good hope that men of practical wisdom and discretion may be found, who would be able to draw the line, with much satisfaction to the country at large, between those oaths of office which might be safely abolished, and such as relating to the more important and solemn offices of state, it might be generally considered expedient to retain.

Agreeing with him that our land is still disgraced by cursing and swearing, and also that prosecutions and convictions are in no way the proper means for checking the custom, I differ from him entirely as to the character and effects of common swearing. He would laugh at it as a matter of no moment, and would, in derision, make us a by-word on account of it. In my mind, it is always associated with rashness, reckless impiety, and a callous and abandoned mind. Experience forbids us to look for the effects of the divine influences of true religion in any one, from whose heart the evil spirit of common swearing has not been dislodged. In its origin, the habit is evil ; during its existence, it is an indication of a depraved, or at least of a careless character ; and, in its effect it is pernicious, shocking the decent and religious, confirming the wicked and impious, and betraying into sin the thoughtless and unguarded.

My anxiety in this treatise is not to make out a strong case against our own times, but to lay before my readers the real state of things at pre-

are poured forth with a velocity for which an Englishman is not prepared. And a gentleman, well conversant with the subject, assures me, that he believes common oaths are as prevalent at least in Germany, as in our own country, and much more frequent in France. But in proportion to the advanced state of religious education among us, ought we not to be far more free than we are, from such corrupt and barbarous practices ?

sent, as they appear to me. I am fully alive to the impolicy as well as the moral wrong of exaggerating present evils in comparison with those of former days; and I am aware that it is the natural tendency of our minds to do so. I would not be understood as expressing an opinion, that less regard is paid to an oath now than at any previous period of our history. In remote times I believe perjury was a very prevalent sin among us. Many interesting facts are recorded bearing directly on the point, and throwing some light upon distant pages of history*. The following address to King Henry the Sixth, by the prelates and clergy of the Province of Canterbury, assembled in convocation in the Cathedral of St. Paul, in the year 1439, when Chicheley was Archbishop, describes a very degraded and melancholy state of society.

“Forasmuch as indictments in matters of trespass, rape, robbery, and other felonies, often be not used for conserving of law, to execution of justice, and to stablishing of peace in the people, but rather such indictments in these days be oftentimes procured to extortion of sheriffs, and other officers, to lucre of maintainers of quarrels, and to enriching of jurors (which in these days in many

* In Hicke's *Dissertatio Epistolaris*, we find not only the forms of many oaths prescribed in the times of the Saxons, but the value also of the oaths of different persons stated, varying according to their station and property.

CHAPTER X.

THE UNIVERSITIES.

No right-minded and considerate man, though personally a stranger to those venerable establishments, if influenced solely by the desire of doing good, would touch with any other than a tender and delicate hand such of their faults as may arise solely from a tardiness in correcting ancient errors, and discontinuing regulations, which by lapse of time have ceased to be applicable. And entertaining, as I do, for both our Universities sincere regard and reverence, and for Oxford sentiments of heartfelt affection and gratitude, I would not consciously utter a word which even an enemy could construe into an unkind reflection. Consistently, however, with the principles which I have professed in my opening chapter, I could not pass over in silence this branch of our subject.

I would then, in the third place, recommend the abolition of all oaths administered to members of our Universities *as such*. And I speak this not without having had ample opportunities of witnessing the workings of the present system. After a constant residence in Oxford through every term of one-and-twenty years, during which I necessarily became acquainted with the feelings and sentiments of per-

ordained against such mischiefs; please it our Sovereign Lord the King—to make all indictments null, unless the King be a party against the trespasser*.” Some exceptions of *murder*, &c. are added.

* Wilkins, *Concilia*, 1439.

CHAPTER VII.

DOES THE PRESENT SYSTEM WORK WELL?

BEFORE I proceed to venture, as I am emboldened to do, upon an humble and respectful, but at the same time an open and undisguised appeal to the legislature as well as to the judges, and all others employed in the practical administration of the laws, it seems necessary to revert (for we have already alluded to the subject incidentally) to the practical effect of oaths as administered among us in securing the truth, where without them it would be withheld or distorted. Does the present system, however objectionable in other respects, work well in providing judges and magistrates with the real facts of the case on which they are called to adjudicate? If this be so, justice is so precious above all earthly good things which a community can enjoy (as a heathen says, "so fair is it and beautiful, as to exceed even the outgoings of the morning and evening in its loveliness"*), that, undoubtedly, if a system, however objectionable in its circumstances, is found practically to provide a kind of body-guard to her throne, we might well beware how we touched it with the tip even of a finger. But is this the fact?

* Arist: Eth: Nic: v. 1.

It is melancholy to reflect how clearly the evil propensities of our fallen nature show themselves, under similar temptations, through all the various degrees of religious darkness and light, and in every age and country of the world. In its worst tendencies, unregenerate nature is ever the same. And though the practices of one age and country may seem to the people of another, proofs of a state of immorality and folly, from which their own is free, yet the real difference often consists in a change, not from evil principles to good, but only from one modification of the same principle to another. How strikingly is this the case in the miserable expedients to which men have recourse, with a view to evade the guilt of perjury, and yet secure their own ends by falsehood! When we hear our Saviour remonstrating with his own countrymen on their folly in supposing that their wretched shifts could deceive the omniscient Searcher of hearts, we are ready to exclaim against the gross darkness which must have covered that people, “Woe unto you, ye blind guides, who say, whosoever shall swear by the temple it is nothing; but whosoever shall swear by the gold of the temple he is a debtor.” But is this folly in itself by a single shade more degrading than the subterfuges by which too many of our countrymen now attempt to deceive both themselves and justice? It is notorious, for example, not only at the Old Bailey

(though that court has given its name to this particular species of fraud) but elsewhere, that many a witness, if he can but escape the observation of the officer, and kiss his thumb instead of the book, will pledge himself to any falsehood without apprehension of incurring the guilt of perjury.

Another principle which I believe to be very commonly received, is that if the juror says nothing, no oath is taken. I know this notion was very current during the last war, when recruits were sworn as soldiers. The magistrate administered the oath in the second person, and the juror said nothing, but kissed the book, and that was not deemed a binding oath. In parts of Wales (where some of the judges who have lately, under the new system, presided at the assizes, have expressed their astonishment and painful disgust at the mass of corrupt perjury which they find witnesses altogether recklessly incurring), the oath, as a magistrate assures me, is not considered binding unless *three* fingers are laid upon the book. In the police-offices of the Metropolis, when Irish Romanists are sworn, the magistrates often compel them to cross themselves, and to kiss a book stamped with a cross*. A Jew of the present day, we are told, regards no

* It has been suggested to me by a friend, that the Irish practice of swearing by kissing a coin, originated in the circumstance of coin formerly having been stamped with a cross—but I believe the custom is of pagan origin.

satisfaction that I have learned, since this chapter was first written, and am now allowed to communicate to others, that a most careful inquiry has been in the course of the last year instituted by authority, with a view of entertaining with safety the question of the abolition, or the change of oaths now usually required in that University. The evidence before me leaves no doubt in my mind, that as honest and sound guardians of their high trust, those who are now in authority there, are doing as they ought to do. They know that change is not in itself necessarily improvement, and that on all important subjects, patient inquiry, and calm and grave deliberation, are indispensable before any body of men can legislate wisely.

any oath which stands in their way *? Among other legal distinctions (of which many might be cited), I would specify two. Before a man can be prosecuted for perjury, he must have sworn "*absolutely* and directly ; if he swore to the best of his thoughts, the best of his recollection, the best of his belief, it will not do†." How easily would human nature extend the temporal immunity to the spiritual obligation ; and argue, that because the English law cannot apply its penalties to that case, therefore neither would the false-swearing be visited by the Almighty. Again, however gross be a man's false-swearing to a matter of fact, still if that matter of fact be not material to the issue or cause

* See Paley on the oath against Bribery at Elections.

† Coke, 3 Inst., 74. But the present practice seems to be at variance with this dictum of Coke. Lord Mansfield maintains, that a man may be indicted for perjury in swearing that he believes a fact to be true, which he knew to be false.—Russell, ii. 518, in his chapter on Perjury, has much of curious matter ; and such distinctions are there stated, as I think confirm the view I have taken above.

For example, if one who offers himself as bail for another, swears that his substance is greater than it is, he may be punished on an indictment for perjury ; but if a man swears (and that before the proper officer) on an application for a Marriage Licence, that he has resided in a certain parish for fifteen days, though he never was in the parish in his life, and though the oath is directed to be taken, and its very terms prescribed by Act of Parliament, no indictment for perjury can be sustained. Many other distinctions may be found in the Law Books.

the general principles, and the minutest details of our present system; and the inference which their representations, taken one with another, have forced upon my mind is, that a very large proportion indeed of the oaths now administered might safely be omitted. I must not dwell on details here; but perhaps I may be expected to specify some instances, by way of example, and they shall be very few. In the Bankruptcy Court, where the average of oaths administered may fairly be taken at one thousand by the week (though, I beg to observe, that nothing turns upon the accuracy of that statement), a gentleman of great talent and attainments, whose station, also, is a guarantee to us against his speaking in ignorance or haste, has assured me, that one half, at least, of the oaths (chiefly in the proof of debts) might be safely dispensed with in his court, without any increased probability of the ends of justice being defeated or evaded. And a gentleman, whose character stands among the first at the Chancery bar, after dividing the oaths principally sworn in that court into four distinct heads, and having most clearly explained and exemplified each, says,—“The fourth class is extremely numerous. The things deposed to are formal matters, not seeming to require or scarcely to admit of any religious sanction, nor capable of being considered with any feeling of reverence. It would, I think, be desirable,” he continues, “that

But humiliating to the minds of Christians and Englishmen as must be these reflections on the attempts made by men in a boasted state of civilization and by professed Christians, to evade the religious obligation of an oath, they do not affect us with so much pain as we feel when we are compelled to witness the dreadful extent to which perjury, direct palpable perjury, prevails among us from one end of the kingdom to another; and that not only in the ordinary and inferior offices of such matter from being introduced, as greatly tending to delay and expense, and to the distraction of those who are to decide. Such matter, if it ever slips in, is not investigated with the degree of precision which attaches to more important matter; nor has the witness the same temptation to falsehood, because such matter can rarely, if ever, produce the least degree of benefit to the party whose interest he espouses.

“Promissory oaths stand on their own grounds. A deliberate breach is undoubtedly a moral offence of equal magnitude with any other species of false-swearing. But considering the weakness, thoughtlessness, and want of resolution, to which human nature is liable, a promise sanctioned by an oath, may sometimes, at a subsequent period, be violated without the same degree of malignity, which must always attend the false-swearing to a matter of fact of the falsehood of which the party is conscious at the moment of swearing.

“I admit fully, that such considerations furnish strong grounds for the abolition of a great part of official and other promissory oaths. And with regard to such as may be retained, it is to be observed, that in cases of official delinquency the offender though not guilty of legal perjury, is yet liable to punishment for breaches of official duty, in the due observance of which the public has an interest.”

magisterial jurisdiction, but in the highest and most solemn tribunals of our country. The complaints of our judges, as to different parts of our native land in this respect, are most distressing to one's moral sense, and when we reflect on the tremendous consequences of perjury in a spiritual point of view, truly appalling. Every obligation of an oath upon the conscience, they tell us, is forgotten. Indeed one gentleman, very high in the Profession, assured me, as the result of his own observation, that not one half of those who came before him to swear affidavits, seemed to feel that they were under the slightest religious obligation to speak the truth.

On almost every circuit, the reports of trials, both in civil and criminal investigations, represent the presiding judge, in some case or other, as leaving it entirely to the jury to decide on the mass of conflicting testimony, alleging that gross perjury on matters of fact must lie at the door of the one set of witnesses or the other, and congratulating himself that it is the province of the jury, and not his, to pronounce by their verdict which of the two parties have incurred the guilt. In our police reports, scarcely one day passes without affording accumulative evidence on the same melancholy subject; and in transactions whether of a parochial nature or affecting the interests of individuals, where the value of any property, of what kind

and suggest the establishment of a rule among us, which I know many of our best men and best lawyers think might be safely and beneficially adopted; I mean that we should leave, in many cases, the administration of the oath to the discretion of the magistrate, when he may think it necessary, unless an opposite party should require the oath instead of the affirmation of the prosecuting party or witnesses. It would also be useful to ascertain, (I have endeavoured to do so, but have not succeeded so fully to my satisfaction as to be authorized to state my opinion in the negative, to which, however, I am strongly inclined,) whether, in practice, in the House of Commons, the same members in Election Committees who administer oaths to the witnesses, have more reason to be satisfied with the result of their examination, than they have when engaged in other committees where no oaths are taken.

MANNER OF ADMINISTERING OATHS.

BUT whether all, or any, or none of the classes of oaths which we have specified, be deemed by the Legislature, after serious deliberation, unnecessary, and therefore to be abolished, I have no doubt at all that a most material change is called for in the manner of administering oaths, as well in the higher courts of justice, as in the other departments of our polity in which the use of oaths may be retained.

Whether it is a growing sin, whether it is more prevalent now than in former days, I have no means of establishing satisfactorily. At all events, the awful nature of the subject would recommend the inquiry to every reflecting Christian and every true friend of his country, whether the quantum of truth secured by the present system of oaths above what would still be preserved under either a totally changed, or a modified system, is in itself great enough to counterbalance the dreadful mass of rash, impious, and false swearing, which is acknowledged to be the result of the system now in general operation. And in estimating that quantum of additional truth, I regret to say, that the more I reflect upon the subject myself, and the more I become acquainted with the sentiments of observing minds, the more I am convinced of its diminutiveness, and the more do I feel the force of Cicero's view, and the more readily subscribe to it as my own.

“But what is the difference between the perjurer and the liar. He who is accustomed to tell falsehoods, has acquired also the habit of forswearing himself. If there is a man whom I could induce to lie, I could easily persuade him to commit perjury. The man who has once gone astray from the truth, is usually drawn, with no greater religious fear, to perjury than to falsehood. For who is influenced by an imprecation of the Gods, who is not in-

fluenced by the force of a good conscience? The same punishment, consequently, which is assigned by the immortals to the perjurer, is also appointed for the liar. For those immortal powers are wont to have their anger and vengeance roused, not so much by the form of the covenanted words of an oath, as by the perfidy and malice of overreaching and fraud*.”

* At quid interest inter perjurum et mendacem.—Orat. pro. Q. Rosc. Com. 16.

might be at the same time avoided*. The inconveniences of the present system have, in one point at least, been so strongly brought to our minds recently, that I conceive most persons are desirous of some improvement in this respect.

The principles which I am here advocating would necessarily interfere with the practice of judges and magistrates delegating to their clerks or servants, either in court or in private, the office of administering an oath. I would not for a moment be supposed to recommend that a judge's time should be taken up, and himself fatigued, by administering the oaths which are now given by his clerk in an outer room, at chambers, or otherwise. I would suggest that the signature of the party, in the presence of the clerk, should be deemed sufficient in all cases where the actual presence and immediate attention of the judge himself is not required, and, in fact, is not now given—such a presence and attention, I mean, as would enable him, if called as an ordinary witness to the signature of a deed, to testify that he did witness it. What would be said in court to a witness who, in his examination in chief, should have declared that a disputed document was signed

* It is a curious fact, that in Durham the witnesses are, even at present, sworn before the grand jury themselves. This exception to the otherwise, I believe universal practice, arises from the circumstance that the members of the grand jury in Durham are all in the commission of Oyer and Terminer.

his Apostles, or of those whom we regard as the most approved models of primitive Christianity. Still in some shape or other, our present is undoubtedly, a very ancient form.

How far however, it is now imperative on our Courts of Justice, to adhere to the one form, viz. that of the juror taking the book in his right hand and kissing it, together with the imprecatory clause, "So help me [or you] God," I am unable to say. In the case of *Dutton v. Colt*, i. Sid. (quoted in *Atkyns's Rep.* i. vol., s. 42), we have this curious fact recorded. "Doctor Owen, Vice-Chancellor of Oxford, being a witness for the Plaintiff, refused to be sworn in the usual manner, by laying his right hand on the book, and kissing it afterwards. But he caused the Book to be held up before him, and he lifted up *his right hand*. The Jury upon this, prayed the opinion of the Court, if they ought to think this testimony as strong as the testimony of any other witness; and Glin, Chief Justice, told them, that in his judgment, he had taken as strong an oath as any other witness; but he said, if he was to be sworn himself, he would lay his right hand upon the book*."

* This happened in the year 1657—The last sentence in *Siderfin* (not quoted by *Atkyns*) would lead us to suppose that this objection was by no means confined to that well-known Vice-Chancellor. He states that the Chief Justice's answer on this occasion was the same which he had made in the former case to the jury (*Oliver and Surrey*) when one of the Jurors was thus sworn.

The words, too, seem to have varied from time to time. When they settled in the present phrase, "*So help me God*," I cannot discover. At the same time, I find no judicial oath in England, that excludes them, or words virtually the same. Among the manuscripts in the British Museum, there is one, (No. 6036,) presented by Sir Henry Ellis, containing a collection of original entries of the reigns of Richard the Second, Henry the Fourth and Fifth, relating to the city of Winchester. It was originally called "The Black Book of Winchester." On an early leaf, apparently of the time of Henry the Fourth, is the oath which was taken on their knees by persons who entered the Merchant Guild of the City, the closing words of which are "So help me God at the Holy Dome." The same form appears in the mayor's oath, when John Neell was mayor, 1st. Henry the Fourth. At the same period, the Bailiffs and Recorder of Winchester, took oaths, finishing, "So God yowe help at the Dome, and all his Saints, and by that Boke*."

* The oath prescribed to be taken by the clergy in 1640, ends thus, "And all these things I do plainly and sincerely acknowledge and swear according to the plain and common sense and understanding of the same words, without any equivocation, or mental evasion, or secret reservation whatsoever. And this I do heartily, willingly and truly upon the faith of a Christian. So help me God in Jesus Christ."

Christopher White, Student of Christ-Church, in his sermons before the University, 1627, informs us, that the words, "And the contents of this book," were sometimes

CONCLUSION OF PART I.

THE objects then, which, after a patient, and I trust an unprejudiced inquiry, I cannot but regard as worthy the serious and favourable consideration of the Legislature are these three:—

First, an approximation towards such a state of a Christian community with regard to oaths as would be worthy of the Gospel: to be attempted by the legislative abolition of all oaths among us (whether ecclesiastical, civil, academical, judicial, municipal, financial, or any other,) except such only, as after a careful and unprejudiced examination of the subject by competent men, might be pronounced indispensable*.

Secondly, that in the administration of those oaths which the law might still require, the presiding judge, or supreme officer (if he cannot always in his own person actually perform the solemn duty of administering the oath in each case) should nevertheless enforce the most grave and reverent and

* On the first of these points I cannot refrain from adding a very brief extract from the letter of a friend of the highest legal distinction. “ I think it of the first necessity to diminish, as much as possible, the multitude of oaths daily taken in this country, and that for this purpose they should be confined to oaths strictly and properly judicial, and to such promissory oaths of office as relate to the more important and solemn offices of state.

impressive manner in those who are intrusted with the duty*.

Thirdly, in cases where the party to be sworn may desire it, a change in all our oaths from the imprecatory to the attesting form, as is already the case with the Moravians and Separatists†.

To effect these changes, or rather, I would say, to diminish the present evils (as far as, after mature and able deliberation, it may be deemed safe and consistent with the best interests of the community to adopt any change,) I would most humbly, but at the same time, most earnestly suggest, that a Commission of Inquiry should be appointed, consisting of members chosen from among the wisest

* On this second point the same excellent person observes, "I think further, it is highly expedient, in the case of judicial oaths, that the form and ceremony should be *more solemn than at present*, and more likely to affect thereby the conscience of the party sworn, and the minds of the bystanders.

† On this third point there seems to be much difference of opinion among persons eminent for soundness of judgment, and clear and liberal views in practical matters. Whilst one considers "the imprecatory form as merely speaking out, in clear and intelligible words, the effect and consequence of a false oath, which the person who takes the oath might not always be able to draw so distinctly for himself;" another says, "The imprecatory form of oath strikes me as wrong. It would be much more decent and pious, if that were left to be implied (as it must needs be) and not expressed." All we mean to say is, "I call God to witness, that what I say is true." The consequences of a false appeal no man can be ignorant of.

and best men in the country of different professions and departments in life. Men who are best qualified by education and experience for the undertaking. The duty of such Commissioners would be, to ascertain whether any alterations are required in the laws and in the practice of our country on these points, and upon what principles such changes should be made.

I am impressed with a deep and lively conviction, that much good would be consequent on the inquiry; and if followed up, the result would be hailed by every friend of true religion, sound morality, and progressive social improvement. Under the Divine blessing, I have good hope we should find it one means of advancing the honour of Almighty God, by associating sentiments of awe with the administration of oaths, whenever those solemn appeals were made to his omniscience,—by cherishing among us habits and feelings of Christian simplicity and truth, which He loves,—by preserving His holy name from profanation,—and by causing it, whenever heard, or uttered, to be held in reverence.

END OF PART I.

PART II.

CHAPTER I.

FORMS OF OATHS.

THE form of administering an oath is by no means an essential part of the oath itself, and indeed, being of human institution, is in itself a matter of perfect indifference, provided it contains nothing irreverent, and the individual sworn regards it as binding on his conscience. Since however, in many cases, the manner in which a thing is done has far greater influence on the generality of mankind than the real character of the thing itself; the mode of administering an oath becomes, in this point of view, a subject of very great importance.

In the first place then, as Mr. Phillips well observes, that ceremony or form is evidently the best which most clearly conveys the meaning of the oath, and most forcibly impresses its obligation*.

* It is curious to find that, as far back as the Peloponnesian war this principle was recognised in the terms of a solemn league between the two chief belligerent powers. After stipulating that the oaths should be taken by the principals and their allies in the several cities, the covenant

tial awe, as well in the person sworn, as in all who witness the ceremony. At the same time, while I assume these to be sentiments generally felt, I am fully aware, that when the expediency of adopting any alteration in the present system shall be discussed, we must expect a great diversity of opinion among men of practical knowledge and sound understanding.

I am also fully sensible, that such a treatise as the present will best perform its own office by keeping within its own province; and instead of offering suggestions of specific alterations as to judicial or other oaths, my purpose is only to state the evils felt, and the principles upon which such alterations should proceed, leaving it to those who are best acquainted with the subject, to apply those principles in detail. And I may be allowed to hope, that should any recommendations appear to come from me, which ought to be left rather to those who are conversant with the details of practice in courts of law, they may not operate to prejudice the question as to the two general principles of abolishing all unnecessary oaths, and of administering with solemnity and reverence such as may yet be retained. Still I may be expected, perhaps, to enter somewhat into detail, in a few cases which have either come under my own personal experience, or have been communicated to me by men of practical knowledge: I would be understood, however,

tice; the oath is administered to witnesses in that particular form which they profess to be most binding; whilst no other than Atheists, and such infidels as profess not any religion that can bind their consciences to speak the truth, are excluded from giving testimony, on the score of incompetency from defect of religious principle.

The adoption of this rule, so agreeable as it is to the dictates of common sense, does not call for our admiration more than the practice and the defence of an opposite principle excite our surprise, especially when we find it countenanced by persons of high legal reputation. Yet so the fact is. Sir Edward Coke* pronounces generally, that an “infidel cannot be sworn,” under which denomination, he intended to comprise Jews, as well as heathens; and Hawkins† holds it to be a sufficient objection to the competency of a witness, that he believed neither the Old nor the New Testament‡. These sentiments strike us with greater astonishment, when we reflect that the very rule now established in our

* 4 Co. Lit. vi. b. 2 Inst. 506. 3 Inst. 165.

† Hawk. P. C. b. 2, c. xlvi. s. 26.

‡ Lord Chief Justice Willes, in giving judgment in the case of Omychund and Barker, says distinctly, “Serjeant Hawkins, in his *Pleas of the Crown*, though a very learned and painstaking man, is mistaken in his notion of Lord Coke’s opinion; long before his time, and ever since the Jews returned to England, they have been constantly admitted as witnesses.”—Atkyns, vol. i., s. 44.

courts, not only before the time of Coke was acknowledged in different parts of Christendom, but was settled even as long back as the days of St. Augustin; so far, at least, as competency on the score of religious belief is affected. A question had been submitted to that illustrious father of the Church, by one Publicola, “Whether it were lawful for us to put a man upon his oath whom we knew to be a heathen, and who consequently would swear by an idol?” Augustin answers in the affirmative, supporting his view of the question as well by the example of Abraham and Abimelech, and of Jacob and Laban, as also by alleging the *necessity of the case*. To one of his very cogent remarks we shall have occasion to refer, when we examine the forms of the ancient Roman oaths; to his reasoning *from the necessity of the case*, a very strong resemblance is borne by the tenour of Chief Justice Hale’s argument, when he points out as well the unreasonableness of excluding indiscriminately all heathens from giving evidence, as the inconsistency of compelling them to swear in a form which they may possibly consider not binding. “It were a very hard case,” says Hale, “if a murder committed here, in presence only of a Turk or Jew, should be dispunishable, because such an oath should not be taken which the witness considers binding, and he cannot swear otherwise, and possibly might think himself under no obligation, if sworn according to the usual

all our kings have ever bound themselves,) by the most solemn religious sanctions to be faithful to his high trust*; and, as the correlative obligation, it may be very fit that certain of his more eminent officers and subjects should, upon the same sanctions, bind themselves to be faithful to their sovereign. There may probably be also some offices of extraordinary trust in the church or state†, which might, in the opinion of wise and good men, require an oath from those who are appointed to them; but allowing such exceptions, I would,

* That our Kings of the Anglo-Saxon race solemnly bound themselves at their coronation, *by an oath*, faithfully to discharge the duties of their high trust; and that it is a mistake to suppose (with Carte), that *they* only *promised on their royal word* to keep the three articles, which the Norman princes *swore* to observe, is shown by Lyttelton. Hist: Hen: II. The old office used at King Ethelred's coronation (he maintains) was used by the Conqueror. The words of that oath are preserved: it commences thus, "I promise in the name of Christ;" and ends, "As may the gracious and merciful God grant his mercy to me and to you." The three articles were,—to protect the Church and all Christian people in peace; to put down all rapine and injustice; and to observe equity and mercy in all judgments.

† I am fully aware of the difficulty, if the principle is admitted, of limiting its application. But I have a good hope that men of practical wisdom and discretion may be found, who would be able to draw the line, with much satisfaction to the country at large, between those oaths of office which might be safely abolished, and such as relating to the more important and solemn offices of state, it might be generally considered expedient to retain.

generally, abolish oaths at the admission into any office ecclesiastical or secular. All persons, on taking upon themselves those duties, to the due discharge of which they are now bound by their oaths, might be then required only to promise to discharge the duties of the office faithfully*. Or rather I would say, that no man should ever be called upon even to promise to do what he is bound by the duties of his office to perform; on the contrary, it should in every way be declared, that every man has already promised to do his duty by the very act of accepting an office.

2. I could wish, secondly, either some declaratory law to be passed, or some authoritative directions to be given, to prevent the administration of "voluntary oaths." They are administered by magistrates throughout the kingdom; many voluntary affidavits also are sworn before Masters in Chancery†. Judges,

* Puffendorf quotes from Father Paul's History of the Council of Trent, an account of the "grossly ridiculous" practice prevalent at Rome on the death of a Pope.— "During the vacancy of the Holy See, the cardinals are wont to draw up a form, consisting of so many heads, for the reformation of the papal government, which each of them swears he will exactly observe, should the election fall on him. Though the experience of all ages testifies that not one of them stands to the engagement; inasmuch as immediately after being chosen pope, they declare that either they could not be tied by such bond, or that their very investiture with that dignity quite releases them from the obligation."

† The practice is now very much discountenanced.

out of his pocket, held it in his left hand, and put his right hand upon it. The president acquiesced, saying to him, "You shall swear to speak the truth." The Jew answered all the interrogatories, and his evidence was received as valid.

But we are anticipating what will more correctly fall under another head of our inquiry. These particulars are mentioned here, merely as establishing what we have stated; that though the present rule of our own courts of law was not settled till the decision of Chief Justice Hale, perhaps even not till the time of Lord Hardwicke, when all doubts on the subject were removed in the celebrated case of *Omychund and Barker**; yet the principle had been very generally adopted in other countries, and that not blindly and by chance, but after much discussion, and upon the authority of some of the greatest names in the Christian Church.

The rule, however, may now be regarded as part and parcel of the Law of England, that all persons *are to be sworn according to the ceremonies of their own religion*†. And this leads us natu-

* 1 Atk. 21. I cannot help recommending a careful perusal of this celebrated case. It may be found in many law-books. In *Atkyns* the arguments on both sides, and the judgments are given at length.

† Perhaps being aware of the fact I ought to observe, that to some persons there seems to be something approaching inconsistency in our practice in this respect. The judge asks the witness what form of oath he considers bind-

rally to the next subject of our inquiry in the history of oaths, namely, the various forms adopted in different ages and different countries, and by members of different religions. We begin with the earliest upon record, which are at the same time, independently of their antiquity, the most interesting to us as Christians—those of which mention is made in the Holy Scriptures.

ing, and allows him to swear according to his answer, whereas a crafty wicked man might with impunity by these means take an oath which he did not consider binding. To this however an answer has been given, that there is no possible mode of discovering the form of swearing which will be the most binding on the conscience of the witness in particular cases, other than by inquiry of the witness himself; and one object of the inquiry is, that after he has answered the question, and has been sworn accordingly, he shall not avoid the temporal punishments of perjury.

sons of every age and academical rank, I am persuaded that a most material change is still desirable in the Universities: I speak with less confidence of Cambridge than of Oxford. In Oxford, within these last few years, much improvement has been effected; many antiquated oaths have been repealed; and very grateful ought we to be towards those who were instrumental in bringing about so desirable a change. But much still remains to be done. Indeed, after seriously weighing the matter in my own mind, and after a free and friendly interchange of sentiments with others, better able to form an opinion than myself, I can say that, without making a single exception, I am not aware of one oath administered by the University of Oxford to her members as such, which might not with safety be abrogated. I am not aware of one that is necessary. Many, doubtless, may conscientiously take a totally different view of the subject, but this I will be bold enough to say, that no one consults the honour of God, or the credit of the church to which he belongs, who is not desirous, within his sphere, and with the best exertion of his faculties, to put an end to every oath, the necessity of which is not evident. The words of Augustin, when justifying a Christian in taking an oath if compelled to do so, speak directly and awfully to all persons, who being in authority, and having the means of promoting a better state

by an oath, the expression conveying that awful idea is, "I lift up my hand to heaven and say, I live for ever*." Our translators have not always indicated this form of the Almighty's oath in their rendering of the Hebrew, but have occasionally substituted the general English word "to swear." In the book of Ezekiel, for example, we read again and again, especially in the twentieth chapter, that "The Lord *lifted up his hand* to the house of Israel, to give them the land of promise," where in the margin, it is subjoined, "or sware:" on the contrary, in another passage†, where the English text runs "I will bring you into the land, concerning the which I did *swear* to give it to Abraham," the marginal reading reminds us that the literal translation would be, "I lifted up mine hand." A very remarkable instance of this form of oath occurs in the last chapter of the prophecy of Daniel. The same form is found also in the Book of Revelation‡, where a most awful and awakening scene is described: "And the angel which I saw stand upon the sea and the earth, *lifted up his hand to heaven*, and *sware* by him that liveth for ever and ever, who created heaven, and the things that therein are, and the sea, and the things which are therein, that there should be time no longer."

Whether this custom prevailed generally through

* Deut. xxxii. 40.

† Exodus vi. 8.

‡ Dan. xii. 7, and Rev. x. 5.

it*. What, for example, can be more indefinite than to say, that those who offend against the statutes are not guilty of perjury if they submit to the penalty, and if there be no gross and obstinate negligence? Who is to draw the line for a young man's conscience, where negligence *not gross* ends, and *gross* negligence begins†? Besides, does not the necessity of so long and so elaborate an explanation of the oath, and of what is and what is not perjury, condemn the oath itself?

To the Bodleian oath I entertain still stronger objections. When I read it through from its solemn opening, "You shall promise, and religiously undertake, in the presence of the great and good God;" to its closing words, "So help me God," the question forces itself upon my mind, Is this swearing (according to the indispensable requisites of our

* Most tutors, I believe, explain the oath to their pupils before matriculation, generally representing it as like the oath of allegiance to the state—an engagement not to resist lawful authority.

† Some persons, I am aware, do not consider an oath objectionable in consequence of its language being indefinite; "because the boundaries of practical right and wrong can never be defined beforehand, and because the conscience ought to be bound by the spirit rather than by the letter." But would not a *simple promise* not to resist lawful authority be equally efficient, and in other respects (especially considering the tender years of the jurors,) far preferable? Or rather why not let the undertaking to do his duty be implied, on the part of a young man, by the very act of matriculation?

juror doing nothing more than lifting up his hand, saying, "I swear." We are told that the form in Scotland (where, by the by, I must not omit the first opportunity of mentioning that all oaths are administered *by the judge himself*, and *not by an officer*,) is much more solemn than the English custom; and certainly it is more ancient, and has higher authority than any other form whatever. In Christian churches (and solemn oaths were usually sworn in a consecrated place; indeed Charlemagne gives a positive direction that they should be all sworn in the church, or upon relics) the jurors were sometimes directed to lift up their hands to heaven, as appealing to the last judgment; at other times they were to extend them towards the altar and the consecrated elements. But of this hereafter.

The next instance of an oath recorded in the Bible is where the words only were uttered, without any external form*. When Abraham was requested by Abimelech and his chief officer Phicol to take an oath of peace and upright dealing, their words were, "God is with thee in all that thou doest; now, therefore, swear unto me here by God:" and Abraham said, "I will swear." The subsequent transaction, in which seven lambs were employed as a witness of their covenant, seems to be altogether

* Gen. xxi. 24.

satisfaction that I have learned, since this chapter was first written, and am now allowed to communicate to others, that a most careful inquiry has been in the course of the last year instituted by authority, with a view of entertaining with safety the question of the abolition, or the change of oaths now usually required in that University. The evidence before me leaves no doubt in my mind, that as honest and sound guardians of their high trust, those who are now in authority there, are doing as they ought to do. They know that change is not in itself necessarily improvement, and that on all important subjects, patient inquiry, and calm and grave deliberation, are indispensable before any body of men can legislate wisely.

“The Lord do so to me and more also, if ought but death part thee and me*,” and in the solemn adjuration by which the aged Eli bound the young Samuel to tell the whole truth: “God do so to thee and more also, if thou hide any thing from me of all the things that he said unto thee†.”

It is melancholy to reflect upon the desecration of the name of the Almighty, the prostitution of the solemn appeal to omniscience and omnipotence implied in an oath, and the mass of perjury polluting and blackening every country and age of the world, to which such a facility of swearing as this kind of oath supplies, has led. The habitual prevalence of oaths in ordinary conversation, which every good man deplores, so far from proving to be a preservation of truth and honesty, has, on the contrary, afforded only a shelter for falsehood and wrong. The observation of St. Augustin is only too fully confirmed by the experience of the ages which have intervened between his time and our own: “The custom of oaths, originating in the most corrupt times of antiquity, has been preserved to our day, not to the end that men might be checked in wickedness by the religious fear, but that perjury also might be added to their other crimes‡.”

* Ruth i. 17.

† 1 Sam. iii. 17.

‡ August. De Civit. Dei.

the general principles, and the minutest details of our present system; and the inference which their representations, taken one with another, have forced upon my mind is, that a very large proportion indeed of the oaths now administered might safely be omitted. I must not dwell on details here; but perhaps I may be expected to specify some instances, by way of example, and they shall be very few. In the Bankruptcy Court, where the average of oaths administered may fairly be taken at one thousand by the week (though, I beg to observe, that nothing turns upon the accuracy of that statement), a gentleman of great talent and attainments, whose station, also, is a guarantee to us against his speaking in ignorance or haste, has assured me, that one half, at least, of the oaths (chiefly in the proof of debts) might be safely dispensed with in his court, without any increased probability of the ends of justice being defeated or evaded. And a gentleman, whose character stands among the first at the Chancery bar, after dividing the oaths principally sworn in that court into four distinct heads, and having most clearly explained and exemplified each, says,—“The fourth class is extremely numerous. The things deposed to are formal matters, not seeming to require or scarcely to admit of any religious sanction, nor capable of being considered with any feeling of reverence. It would, I think, be desirable,” he continues, “that

the solemn form of an oath should not be resorted to in such cases." My friend's observations are most instructive and interesting; but, I fear, their insertion might seem to intrench upon the line which I have already marked out for my guidance. Enough, I think, has been said, to show that, at all events, AN INQUIRY IS CALLED FOR.

Were a commission now existing, such as I trust our governors may soon be induced to appoint, whose duty it would be to ascertain in what cases oaths now required might be safely omitted, as well as to examine any proposed improvement in the administration of those which might be retained, I would venture to suggest that their primary attention should be directed to the inferior courts "of the first instance," as they are called;—our police-offices, our petty sessions, and meetings of magistrates, and the proceedings where one magistrate only is required to act. The general business of such courts arises from questions relating to the poor-laws, benefit societies, the road-laws, petty thefts, assaults, trespasses, and breaches of the peace: questions in determining which, my own experience has convinced me, that in nine out of ten cases, the oaths required by law might be cut off at once, without any impediment whatever to substantial justice; and thus, an incalculable accumulation of perjury and false-swearing might be prevented.

In all these or any other substitutions of affirma-

tions for oaths, care should be taken not only to render the temporal punishment of falsehood at least as severe as that which is now apportioned to perjury, but to make the conviction of the offender far more easy and certain than now is the conviction of a perjurer. Probably it might be necessary to render it imperative on a judge or magistrate, before whom the false affirmation might be made, (or before whom complaint of the offence might be brought,) to commit the offender for trial and to prosecute him at the public expense.

But it will be said, are you not removing one of the safeguards by which public peace and justice are secured? Are you not loosening the bands which hold society together? Experience of the past, a knowledge of the present, and the general opinion of those practical men who are best able to judge, as well as the soundest arguments in the abstract, all unite in answering that question in the negative. Oaths as at present operative among us, are at best no trust-worthy safeguards—securities on which no banker or merchant would depend in his private transactions; and they lead to an appalling mass of perjury. In almost every case, I would say, “Increase bonds and penalties, and diminish oaths.”

I shall not be going, I trust, beyond my prescribed limit, if I refer my reader to the improvements in the Tuscan code (see part ii. c. 8, of this treatise),

and suggest the establishment of a rule among us, which I know many of our best men and best lawyers think might be safely and beneficially adopted; I mean that we should leave, in many cases, the administration of the oath to the discretion of the magistrate, when he may think it necessary, unless an opposite party should require the oath instead of the affirmation of the prosecuting party or witnesses. It would also be useful to ascertain, (I have endeavoured to do so, but have not succeeded so fully to my satisfaction as to be authorized to state my opinion in the negative, to which, however, I am strongly inclined,) whether, in practice, in the House of Commons, the same members in Election Committees who administer oaths to the witnesses, have more reason to be satisfied with the result of their examination, than they have when engaged in other committees where no oaths are taken.

MANNER OF ADMINISTERING OATHS.

BUT whether all, or any, or none of the classes of oaths which we have specified, be deemed by the Legislature, after serious deliberation, unnecessary, and therefore to be abolished, I have no doubt at all that a most material change is called for in the manner of administering oaths, as well in the higher courts of justice, as in the other departments of our polity in which the use of oaths may be retained.

I will not dwell upon the rapidity with which we sometimes have heard the solemn words indecently hurried over, in an affair which ought to be, from beginning to end, deliberate and solemn; because great improvement has certainly, in this respect, been discernible within these late years. One most desirable alteration, however, would be, that either the presiding judge, or a magistrate, should administer the oath; at all events, it should be an officer in rank and importance much above those who are now usually employed for that purpose; and another improvement should be, that *as much as possible*, whenever oaths are administered, the ceremony should not be going on amidst the clamour and confusion of the court*. I will not presume to say, that an oath should never under any circumstances be administered by any one except the chief person in authority present, nor that it should never be administered except when the business of the court was altogether suspended for the solemnity, because

* I have been informed by a lawyer, that the manner in which the oath is administered in courts martial is much more solemn than we generally find it to be in the civil courts. He referred especially to a trial which took place in 1782, when the Judge Advocate and the witness both laid their hands on the Gospels, the witness repeating the oath in his own person after the Judge Advocate. We must not, however, forget that much of the impression made when we witness a proceeding for the first time, is worn off by familiarity.

that would be entering more into detail than our present plan requires; and I should be unwilling to give room for objections to specific practical alterations, which might tend to deprive the general principles upon which I would insist, of a careful scrutiny and a fair unprejudiced consideration. I cannot, however, help confessing the regret which I have often felt on witnessing in the criminal court at an assize so marked a contrast between the correct, solemn, and impressive manner in which the judge's marshal has administered the oath to the grand jury, and the absence of all solemnity and impressiveness when the petty jury are sworn by the crier of the court; though the petty jury consists chiefly of persons of far less cultivated minds, and from their very station and circumstances of life, and the very duties too, which they are then called upon to discharge, requiring far more than those who usually constitute the grand jury, the additional influence of a solemn and impressive address.

A method also might probably be adopted, without the slightest inconvenience to any party, or the least prejudice to the cause of justice and truth, by which witnesses who are to go before the grand jury might be sworn; and the present hurried and confused manner of swearing them in the midst of the bustle and crowd of the court

might be at the same time avoided*. The inconveniences of the present system have, in one point at least, been so strongly brought to our minds recently, that I conceive most persons are desirous of some improvement in this respect.

The principles which I am here advocating would necessarily interfere with the practice of judges and magistrates delegating to their clerks or servants, either in court or in private, the office of administering an oath. I would not for a moment be supposed to recommend that a judge's time should be taken up, and himself fatigued, by administering the oaths which are now given by his clerk in an outer room, at chambers, or otherwise. I would suggest that the signature of the party, in the presence of the clerk, should be deemed sufficient in all cases where the actual presence and immediate attention of the judge himself is not required, and, in fact, is not now given—such a presence and attention, I mean, as would enable him, if called as an ordinary witness to the signature of a deed, to testify that he did witness it. What would be said in court to a witness who, in his examination in chief, should have declared that a disputed document was signed

* It is a curious fact, that in Durham the witnesses are, even at present, sworn before the grand jury themselves. This exception to the otherwise, I believe universal practice, arises from the circumstance that the members of the grand jury in Durham are all in the commission of Oyer and Terminer.

by the parties in his presence, and afterwards, in his cross-examination, should confess, or it should be proved by other evidence, that he was never in the room at all during the transaction, and that he never saw the parties in his life? Would the judge represent him to the jury as a witness deserving implicit credit? In every case where the actual presence and cognizance of the president or judge is not now required or usually had, and the additional solemnity which that presence would convey is not now given, I conceive that the signature of the person who under the present system would be sworn, might safely be held equivalent, to all intents and purposes, to the oath as now administered. The signature might be attested by the clerk who now administers the oath, whilst the same temporal penalties might attach to a false declaration which now may be visited on perjury.

Finally, I cannot but express an ardent wish that every judge, and magistrate, and examining advocate, and every officer of our court, had the sentiment of Sir Edward Coke deeply impressed upon his mind, and ever practically present in his thoughts. That learned man is speaking of the examination of witnesses by a commission; but the spirit of his injunctions may very easily be transfused into every proceeding where recourse is had to the solemn and sacred obligation of an oath. “For as much as the witness by his oath, which

is so sacred as he calleth Almighty God (who is truth itself, and cannot be deceived, and hath knowledge of the secrets of the heart) to witness that which he shall depose, it is the duty both of the commissioner and the examiner gravely, temperately, and leisurely to take the deposition of the witness, without any menace, disturbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the commissioners and examiners ought to read the same distinctly to the witnesses, and suffer them to explain themselves to the manifestation of the whole truth. Interrogatories ought to be single and plaine, pertinent to the matter in question, and in no sort captious, leading, or directory."—Coke, Inst. iv. 278.

CONCLUSION OF PART I.

THE objects then, which, after a patient, and I trust an unprejudiced inquiry, I cannot but regard as worthy the serious and favourable consideration of the Legislature are these three:—

First, an approximation towards such a state of a Christian community with regard to oaths as would be worthy of the Gospel: to be attempted by the legislative abolition of all oaths among us (whether ecclesiastical, civil, academical, judicial, municipal, financial, or any other,) except such only, as after a careful and unprejudiced examination of the subject by competent men, might be pronounced indispensable*.

Secondly, that in the administration of those oaths which the law might still require, the presiding judge, or supreme officer (if he cannot always in his own person actually perform the solemn duty of administering the oath in each case) should nevertheless enforce the most grave and reverent and

* On the first of these points I cannot refrain from adding a very brief extract from the letter of a friend of the highest legal distinction. “I think it of the first necessity to diminish, as much as possible, the multitude of oaths daily taken in this country, and that for this purpose they should be confined to oaths strictly and properly judicial, and to such promissory oaths of office as relate to the more important and solemn offices of state.

made by the Jews, between their judicial oaths, which were always sworn by the name of Jehovah, and their ordinary oaths, such as By the blood of Abel, by Jerusalem, heaven, earth, the temple*, &c. They pretended to observe this distinction with the pious view of preserving the holiest name from irreverence and abuse, but their practical comments on the distinction prove clearly that the chief end aimed at was to be enabled to swear without exposing themselves to the terrors of the law—to break their oath with impunity. The reader will gain much information on this subject from Selden, Lib. ii., c. 11.

* It is said, but there is still much doubt hanging over the point, that if they forswore themselves by the name of God, they were subjected to temporal punishment, and were obliged to expiate their guilt by sacrifice, which was not the case with regard to their other oaths. I have not thought it necessary to examine the celebrated distich of Martial.

Ecce negas ; jurasque mihi per templa tonantis.

Non credo ; jura, Verpe, per Anchialum.

See Spencer, *De Leg. Heb.*

and best men in the country of different professions and departments in life. Men who are best qualified by education and experience for the undertaking. The duty of such Commissioners would be, to ascertain whether any alterations are required in the laws and in the practice of our country on these points, and upon what principles such changes should be made.

I am impressed with a deep and lively conviction, that much good would be consequent on the inquiry; and if followed up, the result would be hailed by every friend of true religion, sound morality, and progressive social improvement. Under the Divine blessing, I have good hope we should find it one means of advancing the honour of Almighty God, by associating sentiments of awe with the administration of oaths, whenever those solemn appeals were made to his omniscience,—by cherishing among us habits and feelings of Christian simplicity and truth, which He loves,—by preserving His holy name from profanation,—and by causing it, whenever heard, or uttered, to be held in reverence.

END OF PART I.

PART II.

CHAPTER I.

FORMS OF OATHS.

THE form of administering an oath is by no means an essential part of the oath itself, and indeed, being of human institution, is in itself a matter of perfect indifference, provided it contains nothing irreverent, and the individual sworn regards it as binding on his conscience. Since however, in many cases, the manner in which a thing is done has far greater influence on the generality of mankind than the real character of the thing itself; the mode of administering an oath becomes, in this point of view, a subject of very great importance.

In the first place then, as Mr. Phillips well observes, that ceremony or form is evidently the best which most clearly conveys the meaning of the oath, and most forcibly impresses its obligation*.

* It is curious to find that, as far back as the Peloponnesian war this principle was recognised in the terms of a solemn league between the two chief belligerent powers. After stipulating that the oaths should be taken by the principals and their allies in the several cities, the covenant

Whilst therefore the ceremony or form has varied in different ages and countries, it is obviously necessary to allow men to swear according to the principles of their own religion, that is, in the manner most binding on their conscience*. “Possibly,” says Chief Justice Hale, “they may not think themselves under any obligation, if sworn according to the usual style of the Courts of England.” And this is now the invariable rule in our courts of jus-

provides that in each case the most solemn oath should be taken according to the custom of the country.—Thucyd: v. 18.

* Puffendorf writes very clearly and satisfactorily on this point. “That part in the form of oaths, under which God is invoked as a witness or an avenger, is to be accommodated to the religious persuasion which the swearer entertains of God; it being vain and insignificant to compel a man to swear by a God whom he doth not believe, and therefore doth not reverence: and no one thinks himself bound to the Divine Majesty in any other words, or under any other titles, than are agreeable to the doctrines of his own religion, which, in his judgment, is the only true way of worship. Hence likewise it is, that he who swears by false gods, yet such as were by him accounted true, stands obliged; and if he deceives, is really guilty of perjury: because whatever his peculiar notions were, he certainly has some sense of the Deity before his eyes, and therefore by wilfully forswearing himself, he violated, as far as he was able, that awe and reverence which he owed to Almighty God. Yet when a person, requiring an oath from another, accepts it under a form agreeable to that worship which the swearer holds for true and he himself for false, he cannot in the least be said hereby to approve of that worship.”—Book iv., c. 3.

bour, and an oath be laid upon him to cause him to swear, and the oath come before thine altar in this house, then hear thou in heaven, and do, and judge thy servants, condemning the wicked, to bring his way upon his head, and justifying the righteous, to give him according to his righteousness*.” The words, too, in which our Lord reproves the evasive distinctions of his degenerate countrymen, seem to point the same way: “Woe to you, blind guides, who say, Whosoever sweareth by the altar, it is nothing; but whosoever sweareth by the gift that is upon it, he is bound†.” That this custom prevailed generally among the Greeks is beyond all question. There is a celebrated saying of Pericles, which this custom fully explains. When a friend urged him to testify in his behalf what was false, he replied, “I am your friend to the altar, and no further.”

Cicero introduces an interesting anecdote in his Oration for Balbus, which at once explicitly declares this to have been the form prevalent in Greece, and at the same time, leads us by fair inference to conclude, that it had not been adopted at Rome in his time. “At Athens, a citizen, we are told, whose character had been established among his countrymen for gravity and holiness of life, after publicly giving his testimony, was ap-

* 1 Kings viii. 31.

† Matt. xxiii. 18.

courts, not only before the time of Coke was acknowledged in different parts of Christendom, but was settled even as long back as the days of St. Augustin; so far, at least, as competency on the score of religious belief is affected. A question had been submitted to that illustrious father of the Church, by one Publicola, "Whether it were lawful for us to put a man upon his oath whom we knew to be a heathen, and who consequently would swear by an idol?" Augustin answers in the affirmative, supporting his view of the question as well by the example of Abraham and Abimelech, and of Jacob and Laban, as also by alleging the *necessity of the case*. To one of his very cogent remarks we shall have occasion to refer, when we examine the forms of the ancient Roman oaths; to his reasoning *from the necessity of the case*, a very strong resemblance is borne by the tenour of Chief Justice Hale's argument, when he points out as well the unreasonableness of excluding indiscriminately all heathens from giving evidence, as the inconsistency of compelling them to swear in a form which they may possibly consider not binding. "It were a very hard case," says Hale, "if a murder committed here, in presence only of a Turk or Jew, should be dispunishable, because such an oath should not be taken which the witness considers binding, and he cannot swear otherwise, and possibly might think himself under no obligation, if sworn according to the usual

at Rome. Be this as it may, the custom was by no means confined to Greece. Livy records (as is generally known,) that after the termination of the African war, when Hannibal, then only nine years of age, with boyish coaxing, begged his father, whilst he was offering a sacrifice for a propitious expedition, to take him over with him into Spain; his father took him to the altar, and compelled him, *laying his hand on the sacred things**, to swear that he would become, as soon as he should be able, the enemy of Rome†. This custom was, at an early period, introduced into Christian countries. Whether the *sacred things* on which the hand was laid, in the case of a pagan altar, were the wood or stone of which the altar was built, or the victim, the Church of Christian Rome presents to us, on either supposition, a corresponding practice. Sometimes the juror laid his hand upon the altar itself, sometimes upon the case which contained the consecrated host, sometimes upon the relics of a saint, sometimes upon the cross, sometimes upon the missal or mass-book. Indeed, not only in this ceremony of laying the hand upon the altar, but in innumerable others we find Christians, with too little scruple, adopting the practices of their pagan predecessors or neighbours.

* “*Tactis sacris.*” The very expression now used in the University of Oxford, is *tactis sacrosanctis Christi Evangeliiis*.

† Liv. xxi. 1.

One usual, and I should conceive an imposing form of oath among the early Greeks, as we learn from Homer, was to mingle wine to typify the union and concord which then prevailed between the parties, and then to offer a prayer and to pour the wine on the ground, with an imprecation, that whoever should first break the oath might have his brains and blood scattered in the same manner, as that wine was poured. The words of Homer, literally rendered, run thus* :—

“And from the pitcher they drew the wine, and poured it into cups, and offered their prayers to the eternal Gods. And thus would each one of the Greeks and Trojans say, ‘Thou Jove, most glorious, most great, and ye other immortal Gods, —whichever party shall first violate these oaths, thus may their brains, their own and their children’s, be scattered upon the ground, as this wine is now, &c.’”

Plutarch in his life of Dion details the ceremonies of an oath, which he calls “The great oath.” Callippus had determined to get rid of Dion, by whatever means; and being suspected, and finding a very strict inquiry instituted under the auspices of the female relatives of Dion, came forward, and with tears denying the charge, offered to bind himself by any pledge which they might

* Iliad. iii. 297.

out of his pocket, held it in his left hand, and put his right hand upon it. The president acquiesced, saying to him, "You shall swear to speak the truth." The Jew answered all the interrogatories, and his evidence was received as valid.

But we are anticipating what will more correctly fall under another head of our inquiry. These particulars are mentioned here, merely as establishing what we have stated; that though the present rule of our own courts of law was not settled till the decision of Chief Justice Hale, perhaps even not till the time of Lord Hardwicke, when all doubts on the subject were removed in the celebrated case of *Omychund and Barker**; yet the principle had been very generally adopted in other countries, and that not blindly and by chance, but after much discussion, and upon the authority of some of the greatest names in the Christian Church.

The rule, however, may now be regarded as part and parcel of the Law of England, that all persons *are to be sworn according to the ceremonies of their own religion*†. And this leads us natu-

* 1 Atk. 21. I cannot help recommending a careful perusal of this celebrated case. It may be found in many law-books. In Atkyns the arguments on both sides, and the judgments are given at length.

† Perhaps being aware of the fact I ought to observe, that to some persons there seems to be something approaching inconsistency in our practice in this respect. The judge asks the witness what form of oath he considers bind-

rally to the next subject of our inquiry in the history of oaths, namely, the various forms adopted in different ages and different countries, and by members of different religions. We begin with the earliest upon record, which are at the same time, independently of their antiquity, the most interesting to us as Christians—those of which mention is made in the Holy Scriptures.

ing, and allows him to swear according to his answer, whereas a crafty wicked man might with impunity by these means take an oath which he did not consider binding. To this however an answer has been given, that there is no possible mode of discovering the form of swearing which will be the most binding on the conscience of the witness in particular cases, other than by inquiry of the witness himself; and one object of the inquiry is, that after he has answered the question, and has been sworn accordingly, he shall not avoid the temporal punishments of perjury.

incurring the guilt of perjury, whilst they pledged themselves to a falsehood *; yet we shall see reason for inferring that, in the majority of cases, such oaths implied either in their original an attribution more or less of divinity to the object by which they were sworn; or in the swearer, the reckless vaunts of infidelity and atheism. Thus Æschylus represents the bold bearing of Parthenopæus to have shown itself in such blasphemy—

By his spear he swears,
Which, as he grasps, he dares to venerate
More than a God, and dearer to his eyes
Than the sweet light of heaven. By this he swears
To level with the ground these walls of Thebes,
Though Jove himself oppose him†.

This was by no means an unusual oath, if we consider the representations of the poets, as we perhaps fairly may consider them, evidence of a previous, though probably a very limited, custom. Nor was it confined to warriors or even men: females employed this oath. Euripides makes Antigone say, “Be the steel my witness, and the sword by which I swear‡.” Statius introduces Capaneus as boasting, “My valour and the sword I hold are

* We have already mentioned this miserable expedient among the Jews, when they swore by Jerusalem, the temple, their own head, &c. In their case, it received what it deserved, the awful rebuke of Him who looks to the heart.

† Septem adv. Theb. 530.

‡ Phœn. 1691.

by an oath, the expression conveying that awful idea is, “I lift up my hand to heaven and say, I live for ever*.” Our translators have not always indicated this form of the Almighty’s oath in their rendering of the Hebrew, but have occasionally substituted the general English word “to swear.” In the book of Ezekiel, for example, we read again and again, especially in the twentieth chapter, that “The Lord *lifted up his hand* to the house of Israel, to give them the land of promise,” where in the margin, it is subjoined, “or sware:” on the contrary, in another passage†, where the English text runs “I will bring you into the land, concerning the which I did *swear* to give it to Abraham,” the marginal reading reminds us that the literal translation would be, “I lifted up mine hand.” A very remarkable instance of this form of oath occurs in the last chapter of the prophecy of Daniel. The same form is found also in the Book of Revelation‡, where a most awful and awakening scene is described: “And the angel which I saw stand upon the sea and the earth, *lifted up his hand to heaven*, and *sware* by him that liveth for ever and ever, who created heaven, and the things that therein are, and the sea, and the things which are therein, that there should be time no longer.”

Whether this custom prevailed generally through

* Deut. xxxii. 40.

† Exodus vi. 8.

‡ Dan. xii. 7, and Rev. x. 5.

the East or no, does not, I think, appear. I am not aware of any decisive evidence on this point in Grecian History, though Homer represents his heroes as lifting up the hand when they swore*; and Virgil supplies ample ground for supposing the custom to have been general†. Hansenius erroneously conceives the practice to have been of later origin‡. Lucian gives a very lively description of an allegorical painting by Apelles, in which Calumny is represented as holding a burning torch in one hand, and with the other dragging a young man, who is lifting *up his hands to heaven*, and calling the Gods to witness his oath of innocence§. Modern history presents to us abundant proof, that through many countries the practice prevailed among Christians. For example, in England, in the Parliament at Shrewsbury 1398, when the Lords took an oath on the Cross of Canterbury never to suffer the transactions of that Parliament to be changed, the members of the Commons *held up their hands* to signify their taking upon themselves the same oath||. To the oaths of Scotland, where this practice still exists, we shall have occasion to refer hereafter. In France it is the only form allowed (except in the case of Jews and Anabaptists), the

* Iliad. xix. 254.

† Æneid xii. 196. See also Pindar, Olymp: vii. 120.

‡ De Juram. Vet.

§ De non temere cred: || Walsingham, p. 356.

juror doing nothing more than lifting up his hand, saying, "I swear." We are told that the form in Scotland (where, by the by, I must not omit the first opportunity of mentioning that all oaths are administered *by the judge himself*, and *not by an officer*,) is much more solemn than the English custom; and certainly it is more ancient, and has higher authority than any other form whatever. In Christian churches (and solemn oaths were usually sworn in a consecrated place; indeed Charlemagne gives a positive direction that they should be all sworn in the church, or upon relics) the jurors were sometimes directed to lift up their hands to heaven, as appealing to the last judgment; at other times they were to extend them towards the altar and the consecrated elements. But of this hereafter.

The next instance of an oath recorded in the Bible is where the words only were uttered, without any external form*. When Abraham was requested by Abimelech and his chief officer Phicol to take an oath of peace and upright dealing, their words were, "God is with thee in all that thou doest; now, therefore, swear unto me here by God:" and Abraham said, "I will swear." The subsequent transaction, in which seven lambs were employed as a witness of their covenant, seems to be altogether

* Gen. xxi. 24.

independent of the oath sworn by Abraham, though it has been sometimes represented as part of that solemnity. And this is the first instance of the juror barely calling upon God to take cognizance of the transaction. Whether this oath generally embraced both members of such a definition as that of Dr. Paley, and imprecated God's vengeance should the oath be broken; or whether it merely called him to witness, we need not stay to inquire. It is the first instance of what frequently occurs in subsequent history, namely, an oath without any ceremony or form beyond the mere act of swearing. Thus, the first oath mentioned in Homer consists merely in the words of attestation. "Swear to protect me," said Calchas, "from the vengeance of an angry potentate;" "By Apollo, dear to Jove, whilst I live," replies Achilles, "no one shall lay his hand on thee*." The general form of words in oaths of this kind in the Bible ran thus: "The Lord liveth," which indeed is the very form prescribed by the prophet† in a command, to the real import of which we shall again refer under another head. It is, however, beyond dispute, that the imprecatory form, however objectionable, was by no means uncommon, either in giving or taking an oath. Of this we have an example in the pathetic appeal made to her mother-in-law by the affectionate Ruth:

* Iliad, i. 86.

† Jerem. iv. 2.

“The Lord do so to me and more also, if ought but death part thee and me*,” and in the solemn adjuration by which the aged Eli bound the young Samuel to tell the whole truth: “God do so to thee and more also, if thou hide any thing from me of all the things that he said unto thee†.”

It is melancholy to reflect upon the desecration of the name of the Almighty, the prostitution of the solemn appeal to omniscience and omnipotence implied in an oath, and the mass of perjury polluting and blackening every country and age of the world, to which such a facility of swearing as this kind of oath supplies, has led. The habitual prevalence of oaths in ordinary conversation, which every good man deplures, so far from proving to be a preservation of truth and honesty, has, on the contrary, afforded only a shelter for falsehood and wrong. The observation of St. Augustin is only too fully confirmed by the experience of the ages which have intervened between his time and our own: “The custom of oaths, originating in the most corrupt times of antiquity, has been preserved to our day, not to the end that men might be checked in wickedness by the religious fear, but that perjury also might be added to their other crimes‡.”

* Ruth i. 17.

† 1 Sam. iii. 17.

‡ August. De Civit. Dei.

The curious variety of such oaths as consist only of words without any additional action or ceremony, will hereafter offer itself to our notice. They were as numberless as are the shades of difference in the religions of mankind, as the Gods many and Lords many which superstitious heathenism adopted; and they varied often with the caprices of individual men*.

3. The next form to which our attention is drawn in the Old Testament, first occurs when Abraham would bind his chief steward by a most solemn obligation, to the performance of a specific duty. "And he said to the eldest servant of his house that ruled over all that he had, Put, I pray thee, thy hand under my thigh, and I will make thee swear by Jehovah, the God of heaven and the God of the earth, that thou shalt not, &c. And the servant put his hand under the thigh† of Abraham his master, and sware to him concerning

* Jacob is said to have sworn by the "Fear of his father Isaac." Which, probably, most persons will consider as merely a periphrastical expression for the Almighty. "The fear of whom (as Theodoret instructs us to interpret the passage,) the patriarchs cherished in their hearts."

† I am fully aware of the symbolical meaning connected with the mysteries of Egypt, connected with this form of oath: but we need not pursue that subject further. It has been stated, that there are no instances of this oath being used, except by the patriarchs, but there are instances, we are told, of its prevalence among the Egyptians even in modern times.

this matter*.” The same form precisely we find on the death-bed of Jacob: “And the time drew nigh that Israel must die, and he called unto him his son Joseph, and said unto him, If now I have found grace in thy sight, put, I pray thee, thy hand under my thigh, and deal kindly and truly with me: bury me not, I pray thee, in Egypt, but I will lie with my fathers, and thou shalt carry me out of Egypt and bury me in their burying-place. And he said, I will do as thou hast said, and he said, Swear unto me, and he swore unto him; and Israel bowed himself on the bed’s-head†.”

A custom somewhat analogous to this offers itself to our notice in ancient as well as in modern times. Ancient history tells us that when invoking any one of their Gods to witness the truth, the juror touched the foot or the knee of that deity’s statue‡; and (as our law-books tell us in the case of Omychund and Barker) the ceremony of a Gentoo’s oath is to the present day this;—the witness touches the feet of a Brahmin, and two other Brahmins at the same time touch the witness’s hand.

4. This form of oath was, for the most part, observed when an inferior, either in station or age, pledged his faith to his superior; the form which occurs next in order in the Old Testament was, as

* Gen. xxiv. 3.

† Gen. xlvii. 29.

‡ See Juvenal, Sat: xiv. 219.

What was the precise view taken by those who prescribed this oath, admits of doubt. Whether their abject flattery led them to profess that the safety of the emperor was dearer to them than their own; or whether they meant to attribute to him somewhat of the divine nature, is by no means evident. Perhaps some took the one view and some the other; whilst the majority probably had a confused notion merely of honouring him above the rest of mankind. Puffendorf adopts the first view, but in the same passage gives a sufficient warrant for the second. "For they did this [they swore by the safety of the emperor, and esteemed such an oath more strict and sacred than those in which the name of God is immediately invoked,] not as thinking there was any Divinity in their princes whilst alive, nor as imprecating their displeasure if any one spoke false; but because many of them, either in good earnest, or at least in flattery, intended hereby to show that they preferred their prince's safety to their own; and therefore looked upon it as a more horrible perjury to devolve the wrath of God upon *him* than upon *themselves*. So that the sense of those protestations was properly this:—*So may my prince be happy and safe, as I perform what I now promise, that is, unless I fulfil my engagements I desire the Divine judgments to light on my prince's head.*" At the same time Puffendorf makes the following quotation from

Vegetius, who is reciting the Christian Soldier's oath: "They swear by God, and by Christ, and by the Holy Spirit, and by the Emperor's Majesty, which, next to God, is to be loved and to be worshipped by mankind, for when our prince hath been once invested with the title of Augustus, we are to pay to him, as to *a present* and a *mortal God*, faithful devotion and most watchful service*."

Whilst we find the names of all their gods and goddesses, at various times appealed to, and hear, from eye and ear witnesses, of the practices unhappily prevalent in Christian Italy as relics of ancient times, we ought not to consider that information as the end of our inquiry, but carry on the examination further, with a view of learning our own national errors, and of amending what is wrong among ourselves. We shall find Protestant England very far from guiltless in this point. Tertullian†, in his work on Idolatry, laments, that even in his day, Christians used heathen oaths unwittingly. We do the same. He mentions the words "Mediusfidius and Mehercule," as instances of the bad habit. In Italy it is of very frequent occurrence to hear an oath sworn by the face of Bacchus, by the body of Bacchus, by Diana, &c. How often do we hear our own countrymen swear, "By Jove," "By my life‡," which is a very classical and a very unchristian oath.

* Puffendorf, iv. 2.

† Tert. de Idol. c. 20.

‡ "Ita vivam," Cic. Epist. ad fam, ii. 13.

break his word, nor would any one hesitate to place the fullest confidence in another, *after the hand was once given**." The classical remains of antiquity abound with instances to the same effect; we must be content with one more reference. When Germanicus, on his death-bed, had communicated his last wishes to his friends who stood around, those friends *swore*, says Tacitus, *laying their hands on the hand of the dying man*, that they would lose their life rather than not take vengeance on his enemies†.

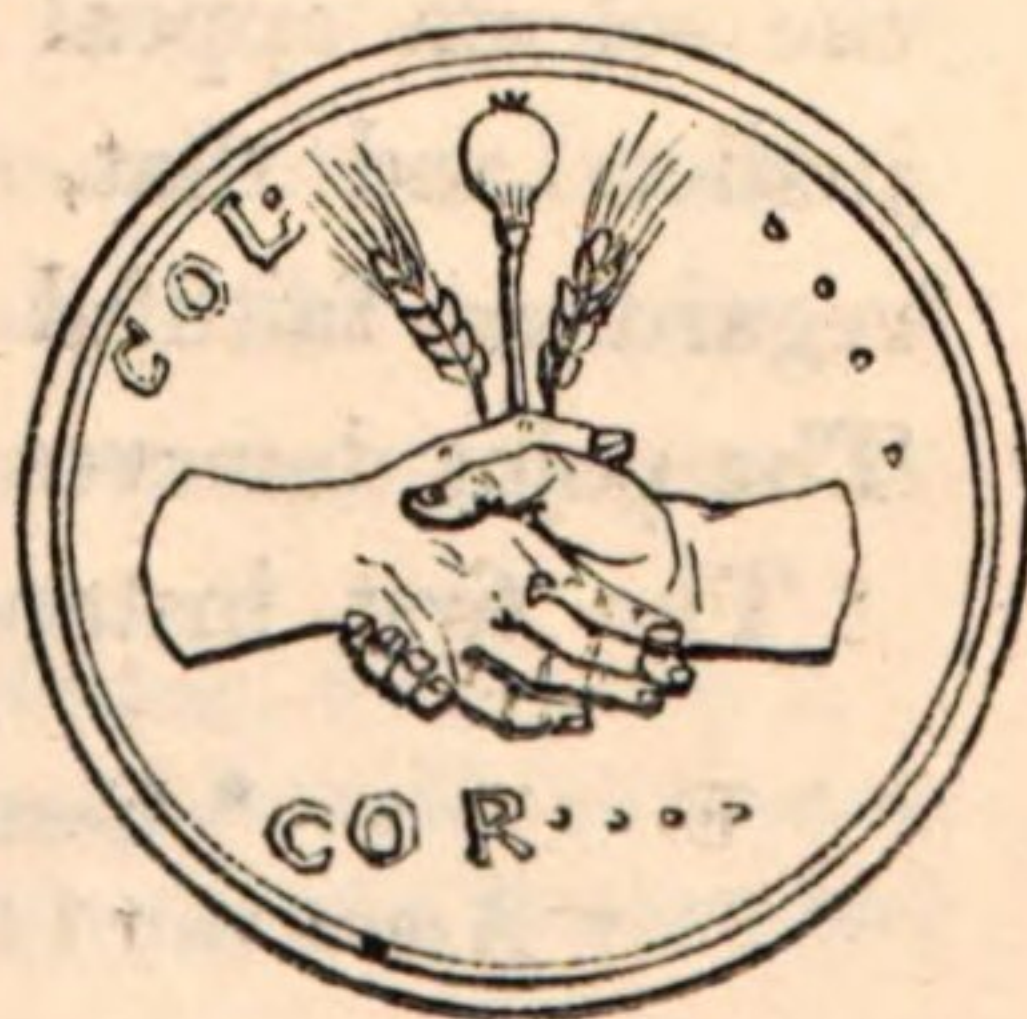
The English reader needs scarcely to be reminded that the most solemn of all earthly pledges and vows is given between man and wife by *joining of hands*‡.

5. Another form of oath is recorded (Numbers v. 22), by which the magistrate repeats the words

* Joseph. xviii. 9.

† Tac. Ann. ii. 71.

‡ We meet with the representation of the pledge given by the joining of hands, in connexion with some religious ceremony, on many ancient coins; of which the accompanying engravings are specimens. They are taken from golden coins in the British Museum.



Plutarch*, which, we fear, has not been without its match in modern times. It was the case of some young men, who had been seduced into a conspiracy, and who were compelled to swear a solemn dreadful oath, after tasting the blood of a murdered man, and laying their hands upon his vitals.

The practice of swearing a multiplicity of oaths in attestation of the same thing, and by various divinities, seems to have been very prevalent in pagan Rome, as it was in Greece. From this heathen custom probably, with innumerable other immoral and impious practices, Christian Rome derived it. And we may reasonably believe that the repetition of the oath, and the number of the names by which it was sworn, secured about the same quantum of additional truth and sincerity in both. Of this practice we have an example in the passage of Plautus above quoted; thus, too, in the satire of Juvenal† to which we have already referred: and when Medea would bind Ægeus by

* In Poplicola.

† Sunbeams and thunderbolts he boldly cites,
And all the darts of Cirrha's lord invites;
The spear of Mars he resolutely dares,
By the full quiver of Diana swears;
Pallas and all her terrors hear him brave,
And him, whose trident stirs the Ægean wave!
Whatever arms the arsenals of light
Prepare, for punishment of impious wight,
He dares them all!—

Sat. xiii. 75. BADHAM'S *Translation*.

servant of God swearing by the name of another being, and not by the name of the Lord, is familiar to every one in the case of Joseph, during his interview with his brethren, who twice in the same sentence pledges himself, “By the life of Pharaoh*.”

Dr. Sanderson† in his lectures before the University of Oxford, professedly anxious to rescue the memory of so exemplary a man from the charge of rash and common swearing, would have us believe that this was not the form of an oath at all, but only a mode of expressing his conviction forcibly. The professor, I think, himself confesses the weakness of his own argument, and whilst he intimates his knowledge of the existence of collateral evidence in proof of its having been an oath, which however he does not examine, rests his defence of Joseph solely upon this, that independently of such evidence, there is nothing in the words themselves which proves him to have taken an oath. That the speech of Joseph however contained an oath, twice repeated, will, I think, be evident, before we leave this subject, and that, too, an oath of very pernicious precedent. In him, doubtless, it by no means implied the transfer of homage from Jehovah to a human being‡, yet the

* Gen. xlii. 15, 16.

† Sanderson, Prælect. v. 7.

‡ In forming our opinion, however, of Joseph's character, we must not forget the age in which he lived: the law had

is recorded by Polybius as having been taken by the contracting parties in the league between Hannibal and the representatives of Carthage on the one part, and Xenophanes, the ambassador of Philip, for his master and the Macedonians on the other part. “In the presence of Jove and Juno and Apollo, in the presence of the tutelary deities of the Carthaginians, and Hercules, and Iolaus; in the presence of the Gods who accompany hosts to battle, and the sun, and the moon, and the earth; in the presence of rivers, meadows, and waters; in the presence of all the Gods who preside over Carthage; in the presence of all the Gods who preside over Macedon and Greece; in the presence of all the Gods, who take the charge of wars, as many as are present and watch over this treaty, &c*.”

So in the times of superstition and darkness, professing Christians would swear by the Almighty, and by angels and archangels, and saints, and the pope’s see, in attestation of one and the same thing. They swore, too, on the bodies and tombs of the saints; and often went, for this purpose, from one sepulchre to another. For example, in the year 757, Tassilo* promised fealty to King Pepin, and to his sons Charles and Carloman, on the body of St. Denys, and not only *there* (*ibi*), but also on the

* Polyb: vii. 2.

† Eginhard de Tassilone. See Du Cange, vol. iii. 1611.

bodies of St. Martin and St. Germain, he swore to be faithful all his days. All these oaths he broke, unless historians wrong him; and he was sent to a convent for the rest of his life.

Among the Greeks*, on important occasions, we find persons taking an oath to give counsel to the best of their judgment. In Rome, the consuls swore, when entering upon their office, to discharge it faithfully; and, on retiring, they swore that they had discharged its duties with fidelity. The fact is so indisputable, that merely for proof's sake, we need not appeal to any recorded individual case. There is, however, so remarkable an instance mentioned by Cicero of himself, and so full of information on a point of internal practice at Rome, that I am induced to believe my readers will not think its insertion here irksome. When, at the expiration of the year of his consulate, Cicero himself was desirous of addressing the assembled Romans on the manner in which he had discharged the arduous duties of his station, the Tribune authoritatively forbade him, and confined him to the mere oath; when he raised his voice to the loudest pitch, and swore not the prescribed oath, not (as Plutarch expresses it) *his country's oath*, but one of his own: "The commonwealth and this city, have been saved by me alone!" And all the

* Xen. Anab., Lib. v., c. vi. 3.

emperor; and Caligula considered the refusal or omission of an oath, "by his genius," a sufficient ground for inflicting punishment on the offender*. Nor can we forget, what one of the most undoubted and most affecting pages of ecclesiastical history records, the firmness with which the good old Polycarp resisted, even unto death, the temptation to swear by the life of the emperor, when his acquiescence would have saved him from the tortures of martyrdom, "Have pity on thy own great age—swear by the fortune of Cæsar†."

We must, hereafter, mention some of the practices, into which the degenerate and unreformed church fell: the parallel between it and heathenism, in this particular, is too palpable not to force itself upon our notice. One of their forms of oath was, "By God, and by the safety of the Apostolic See and the Pope." We sometimes, in our own days, hear careless speakers, who would shrink from taking the name of God in vain, yet attempt to infuse life into their conversation by similar expressions, in their origin and use equally objectionable.

We have elsewhere observed upon the distinction

* Sueton: in Vit. Calig: xxvii.

† "In the Council of Ephesus, an oath was taken by The Holy and Consubstantial Trinity, and by the Piety and Victory of the two masters of the world, Flavius Theodosius, and Flavius Valentinianus, the Emperors."——Cotel: Patr: Apost: II., p. 196.

made by the Jews, between their judicial oaths, which were always sworn by the name of Jehovah, and their ordinary oaths, such as By the blood of Abel, by Jerusalem, heaven, earth, the temple*, &c. They pretended to observe this distinction with the pious view of preserving the holiest name from irreverence and abuse, but their practical comments on the distinction prove clearly that the chief end aimed at was to be enabled to swear without exposing themselves to the terrors of the law—to break their oath with impunity. The reader will gain much information on this subject from Selden, Lib. ii., c. 11.

* It is said, but there is still much doubt hanging over the point, that if they forswore themselves by the name of God, they were subjected to temporal punishment, and were obliged to expiate their guilt by sacrifice, which was not the case with regard to their other oaths. I have not thought it necessary to examine the celebrated distich of Martial.

Ecce negas; jurasque mihi per templa tonantis.

Non credo; jura, Verpe, per Anchialum.

See Spencer, *De Leg. Heb.*

anger uncontrolled by reason, and impetuosity of temper driving them on to violence, the only expedient left is to restrain them by invisible terrors and such-like alarming fictions. The ancients consequently, in my opinion, brought in their doctrines about the Gods, and the affairs of Hell, for the belief of the people, not at random, and by chance. But, much rather do they of the present day seem to be acting with rashness and a want of reason in rejecting them. One consequence, out of many, is this; that whilst, among the Greeks, if the public officers of state have the value of only one talent intrusted to them, let them have ten sureties, and as many seals, and twice as many witnesses, they cannot be faithful to their trust; among the Romans, whether in the magistracies or embassies, let them have never so large a sum in their hands, they discharge their trust in consequence of the pledge given merely by their oath*; and whilst, among other people, it is rare to find a man abstaining from peculation, and guiltless of wrong, among the Romans it is rare to find any one detected in an act of dishonesty†.”

* This reference of the honesty of the Romans to their reverence of an oath, must not be forgotten, whenever the expediency of retaining Oaths of Office may be under consideration. I think, however, that Polybius is not in the least contrasting the value of an oath with a bare promise among the Romans, but Roman integrity, as the offspring of a religious principle, with the perfidy of the irreligious Greeks.

† Polyb., b. vi., c. 56.

quently, may expect to find the names, by which the heathen nations swore, to be as countless as their divinities; all of whom, as their fables say, were bound by a specific duty to visit with their full tide of wrath, the mortal who should dare to dishonour their name by perjury. Among these, however, Jupiter himself, and his daughter Justice, and the Furies, seem to have been supposed to be more especially employed in executing vengeance on souls polluted by that specific guilt; pursuing them and their families to utter destruction on earth, and racking them with excruciating tortures below*. And yet perjury was one of the most crying sins among their worshippers.

The Greeks seem to have recognised a broad distinction between their greater and lesser oaths, for which they had sufficient countenance in their mythology. In making this distinction, they only followed the Jews, and unhappily, their example is too closely followed by Christians, who ought to know better. The fables of the ancient heathen world tell us that, even among the Gods, perjury was, in some cases, considered merely as a venial error; whilst if any immortal should swear falsely by the waters of the Styx, he should be deprived of nectar, and forfeit his divinity for a hundred years†. We must not dwell on the tales of their

* Eurip. Med. 170 and 210.

† Hesiod. Theog. 400; see Potter's Antiq. ii. 6.

mythology ; though some of them not only throw light upon dark parts of ancient history, but at the same time enable us to trace many customs of the moderns, and of Christians, to their pagan origin. Thus when we read the passage in Hesiod above referred to, it is impossible not to associate that well-known fable with the custom prevalent in India of the natives swearing *by the Ganges water brought in a phial*.

If there be one of those who dwell in heaven
That utters falsehood, Jove sends Iris down,
To bring from far in *golden ewer* the wave.
..... Of the immortals,
..... [He] *who pours out the stream*,
And is forsworn—he, one whole year entire,
Lies reft of breath, nor once draws nigh the feast
Of Nectar.

The ceremony of taking an oath, among the Greeks, to which our attention is first drawn, is that of approaching the altar, laying the hand upon it, and swearing by the divinity to whose honour it was raised. I am not aware of any oath administered in this form being upon record in the Sacred Writings, otherwise we should have specified the custom under the preceding head. There is, however, a clause in Solomon's Dedication-Prayer, which seems to imply the existence of such a form among the Jews, previously to the building of the Temple. "If any man trespass against his neigh-

escaped their lips: thus, "No, by,"—"Yes, by." To such wretched shifts will men have recourse, whose minds are under the influence of superstition and not of a sincere religious principle. What were the real views of Socrates, or of any other philosopher, in adopting these forms of oath, it may not be easy to determine. Was it to ridicule the solemn oaths by their gods on frivolous occasions, so prevalent in their times? or was it to withdraw their countrymen from a belief in those unnumbered Deities, whose names had been a disgrace even to unassisted reason? Whatever was their motive, I think it is very clear that somewhere or other, by some nations or individuals, the objects by which men swore, were in the great majority of cases regarded as DIVINITIES, however absurd and incredible a folly it may appear to us now.

This point seems to me, one of considerable importance, and though, by the very nature of the subject, we cannot establish our opinion universally, we may, if I mistake not, carry on an induction which will approximate very nearly to legitimate proof. When Epiphanius*, for example, tells us of a teacher, who compelled his followers to swear by salt, by water, by air, by wind, by the earth, and by heaven, we must not separate from this, such information as Menander† supplies us with;

* Epiphan. Adv. Hæres. Lib. i.

† Menan. Frag. 354.

“Epicharmus says that winds, the sun, the earth, water, fire, stars, are the Gods.” When we hear that Socrates swore by the dog, the comment upon that philosopher’s practice, by the impious Lucian, must not be forgotten; “What think ye? does not the dog appear to you a divinity? See you not how great in Egypt is Anubis, and in heaven Sirius, and among the infernals Cerberus *?”

A very strange assertion startles us in the Greek

* On this subject, however, I cannot speak without considerable doubt, as to the general conclusion, which upon the whole, I have been induced to adopt. There are many contradictory facts and opinions on record. Spencer (*De Leg. Heb. i., c. 11.*) takes the same view with that which I have adopted in the text. Among other expressions bearing the same way, he says, “The Israelites departing from the law and worship of God so frequently, swore by false Gods, because they were considered in that manner to ascribe divine honour and worship to those gods. And perhaps, he will not err from the truth who shall conclude that, the Israelites so often swore by such Gods, with a view of conforming themselves to the manners of the Egyptians, which they held in high estimation. For, as Pliny relates, the Egyptians in their oaths reckoned parsley and onions among their Gods, and paid them divine honours.” The question is also discussed at some length by Puffendorf, who had adopted a different view from the one which I have offered in the text. “Such forms, he says, we are to esteem as merely jocular. They swore by these not as by Gods, but to avoid swearing by the Gods, when by the practice of the generality of men, it was grown into an ill custom to apply oaths as the supplemental ornament of speech.” He then refers us to Apollonius in confirmation of his own view of the subject; and to Apuleius and Bishop Sanderson, as having espoused the opposite opinion.—B. iv. c. 2.

at Rome. Be this as it may, the custom was by no means confined to Greece. Livy records (as is generally known,) that after the termination of the African war, when Hannibal, then only nine years of age, with boyish coaxing, begged his father, whilst he was offering a sacrifice for a propitious expedition, to take him over with him into Spain; his father took him to the altar, and compelled him, *laying his hand on the sacred things**, to swear that he would become, as soon as he should be able, the enemy of Rome†. This custom was, at an early period, introduced into Christian countries. Whether the *sacred things* on which the hand was laid, in the case of a pagan altar, were the wood or stone of which the altar was built, or the victim, the Church of Christian Rome presents to us, on either supposition, a corresponding practice. Sometimes the juror laid his hand upon the altar itself, sometimes upon the case which contained the consecrated host, sometimes upon the relics of a saint, sometimes upon the cross, sometimes upon the missal or mass-book. Indeed, not only in this ceremony of laying the hand upon the altar, but in innumerable others we find Christians, with too little scruple, adopting the practices of their pagan predecessors or neighbours.

* "Tactis sacris." The very expression now used in the University of Oxford, is *tactis sacrosanctis Christi Evangeliiis*.

† Liv. xxi. 1.

One usual, and I should conceive an imposing form of oath among the early Greeks, as we learn from Homer, was to mingle wine to typify the union and concord which then prevailed between the parties, and then to offer a prayer and to pour the wine on the ground, with an imprecation, that whoever should first break the oath might have his brains and blood scattered in the same manner, as that wine was poured. The words of Homer, literally rendered, run thus* :—

“ And from the pitcher they drew the wine, and poured it into cups, and offered their prayers to the eternal Gods. And thus would each one of the Greeks and Trojans say, ‘Thou Jove, most glorious, most great, and ye other immortal Gods, —whichever party shall first violate these oaths, thus may their brains, their own and their children’s, be scattered upon the ground, as this wine is now, &c.’ ”

Plutarch in his life of Dion details the ceremonies of an oath, which he calls “The great oath.” Callippus had determined to get rid of Dion, by whatever means; and being suspected, and finding a very strict inquiry instituted under the auspices of the female relatives of Dion, came forward, and with tears denying the charge, offered to bind himself by any pledge which they might

* Iliad. iii. 297.

bold and heroic genius of the tragedian, puts the ceremony before our eyes, with the life and colouring of a master-pencil* :—

Seven valiant chiefs
Slew on the black-orb'd shield the victim-bull,
And, dipping in the gore their furious hands,
In solemn oath attest the god of war,
Bellona, and the carnage-loving power
Of terror; sworn from their firm base to rend
These walls, and lay their ramparts in the dust,
Or dying, with their warm blood steep this earth.

Sadly degrading as these customs are to our race,—customs which remind us that in *religion*, when the mind is not enlightened by revelation, there is much less difference than most of us perhaps are accustomed to consider, between the civilized countries of the world and those which are called barbarian, still I doubt much whether these practices have not been equalled in their absurdities, and impieties, by such as have in former days prevailed in Christendom, telling us how little a *corrupt Christianity in its worst form* ranks above heathenism. Certainly if the guilt increases in proportion to the light against which the offence is committed, a comparison between these follies of pagan times, and the frequent prostitution of the

* Septem. v. Theb. 42. I am not acquainted with any evidence of such a custom having prevailed among the Greeks, subsequently to the heroic ages.

most sacred rites of our holy religion in past ages, leads us to serious reflections on the inconsistent conduct of men, who profess to receive the Gospel of truth, and peace, and charity.

CHAPTER VI.

OF THE FORMS AND HISTORY OF OATHS AMONG
CHRISTIANS IN PAST AGES.

WITHOUT repeating what we have already alleged under a previous branch of our inquiry, when we spoke of the lawfulness of Christian oaths, and the present state of them in our own country; we may observe, in tracing their history among professors of the Gospel, that the probability is very strong, that the primitive Christians habitually shrank from taking an oath. If they swore at all, it was on some very solemn and extraordinary occasion. Their general rule was not to swear at all. But (as Augustin*, in a passage already quoted, acquaints us, in terms of great regret and lamentation,) the ancient custom of swearing in process of time prevailed among Christians, as the fruit of a most corrupt state of moral principle and feeling. It was admitted however, “not in order to check the progress of wrong, but that perjury also might be added to our crimes.”

Still the readiness with which Christians came at last to swear was, as it appears, the work of time, spreading gradually among them as they mingled more and more with their Pagan neighbours, and

* Aug: de Civitate Dei.

departed further from their original principles. For some time they only called, "The truth to witness," regarding that form as a solemn oath, the appeal being made to God, who is himself "The Truth." "Whatever we speak, as in the presence of God, says Athanasius, "we Christians consider as spoken under an oath*." But this practice of swearing, "By the truth," was, in after ages, perverted into a cloak for perjury, as we are expressly told in the laws of Charlemagne†. A translation of the whole section to which we refer will not, I hope, be unacceptable to my readers.

"All men are to be diligently admonished to avoid perjury, not only when the oath is sworn on the Holy Gospel, or the altar, or the relics of saints, but also in common conversation. For there are some who swear 'By love and by truth,' and avoid an oath on the name of God, ignorant that God is the same as love and truth; as the Apostle John says, 'God is love,' and also our Lord himself, in the Gospel says, 'I am the truth,' whoever, therefore, swears by love and truth, swears by God. Also must we take care not with pharisaical superstition to honour the gold more than the altar, lest the Lord should say to him [who does so], 'Thou fool, which is the greater, the gold, or the altar which sanctifieth the gold.' It seems, besides,

* Athan: ad Emp: Const: Apol:

† Charlemagne, Capit. lxiii.

right to us that he who has to swear by the saints, should swear fasting, with all honesty and in the fear of God; and let every one be assured that he will give an account to God, wherever it be, whether in the church or out of the church."

It is moreover certain, notwithstanding the first reluctance of Christians to take an oath, that the practice of swearing upon the Gospels became, after no very long period, generally prevalent in Christendom. Ancient writers tell us that Christians borrowed this practice from the Jews, who were accustomed to swear laying their hand upon the book of the Law*, regarding that as the only binding oath. Even in as ancient a church historian as Sozomenus we read that, "Euagrius swore to the Emperor Theodosius, laying his hand on the holy Book of the Gospels†." The celebrated Pelagius, when charged with some evil designs against Vigilius, disclaimed them by an oath which he swore, holding the cross and the Gospel on his head. Even the very form which is now prevalent in our courts of justice, that of holding the book and kissing it, was of very early introduction into Christendom. Arsenius‡, an ancient bishop, records of Ingeltrude, wife of Boson, that she swore an oath to Pope Nicholas, in these words: "I, Ingeltrude, swear to my Lord Nicholas, the chief

* See Selden, II., 11.

† Sozomenus de Euagrio.

‡ Du Cange, 1607.

pontiff and universal pope, by the Father, the Son, and the Holy Ghost, and these four Evangelists of Christ our God, which I *hold in my own hands, and kiss with my mouth,*" &c.

The gospels were generally put upon the altar, and the juror's hand laid on them. Sometimes, though at a much later date, they swore upon the missal, or mass-book, at other times by the canon or rule of the church in which they were, sometimes by the relics. It would be endless to enumerate the different modes by which these appeals to heaven were made, but it may not be unprofitable or uninteresting to specify some of them*. A letter, in which those who have the good fortune of knowing him, see only the usual marks of the author's profound and various knowledge, but which otherwise might be cited as an instance of uncommon research, written by Sir Henry Ellis to the Earl of Aberdeen, as president of the Society of Antiquaries, "On the History of Bracelets," contains a passage of great interest in our present inquiry. "Arngrim Jonas, in his work on Iceland, speaking of the pagan rites which were used in the

* Attempts we find, were often made by authority, to check such oaths as were blasphemous, or savoured strongly of paganism. It was made a capital offence to swear "By the hair or the beard of God." "Ultimo supplicio subjiciatur." Ivon: xii. 32. By another decree, similar oaths were forbidden to a clergyman on pain of deposition, and to a layman on pain of incurring the anathema of the Church.

chief temple of Southern Iceland, in the isle of Kialarnes, describes a bracelet of twenty ounces weight, which was kept upon the altar, which being sprinkled by the blood of victims, was touched by those who took any solemn oath. He says it was either of silver, or of silver and brass mixed. He adds, in another page, that for this purpose it was worn on the judge's arm during trials. Arngrim Jonas's bracelet," continues Sir Henry, "reminds me of a very remarkable passage in the Saxon chronicle under the year 876, where, when the Danes made peace with the English Alfred, at Wareham, in Wessex, they gave him the noblest among them as hostages, and swore an oath to him upon the holy bracelet." I must not withhold here what has since fallen in my way, that some represent the oath "*in armilla*" to mean, swearing by the *knocker of the abbey gate*, or rather perhaps the ring by which the door was pulled to: a practice which appears certainly to have prevailed. Others, probably from an ignorance of such facts as Sir Henry Ellis has put together, confuse this oath with the form very general among the northern nations in ancient days, of swearing *by their arms*. We may observe, by the way, that this oath *upon the arms* was not, as some* have groundlessly supposed, by the *instruments of the sacrifice*, but by *the warrior's arms*, generally blessed by the priest; an

* See Macer.

oath, with many others, forbidden in the sixth synod*.

In our own country no more solemn oath could be taken than one sworn "by the abbey of Glastonbury." This is distinctly asserted in the Chronicle of Robert of Gloucester.

And greater oath none is
Than by the old church of Glastonbury, whoso deep oath
name,
For there was church four hundred year, e'er St. Austin
hither came.

The history of every country supplies us with too great an abundance of oaths varied in numberless forms. Kings and subjects, priests and lay people, christians and infidels, men and women alike, seem to have thought it their privilege to choose their own oath. Whoever feels disposed to examine this part of our subject further, will find much information in Warton's *Observations on Chaucer*. The *Canterbury Tales* offer us a melancholy picture of the state of conversation among our forefathers in this respect. Some of their oaths are scarcely intelligible to us now without considerable research. Others are curious though familiar

* Pope Nicholas, towards the latter part of the ninth century, in answer to an application for his guidance in various points, mentions the custom of bringing out a broad sword (if the word *spatha* is to be so interpreted) and swearing by it; and he enjoins them to swear by God only, and on the Gospel. Lab: Conc: vol. ix.

this swine: and so much the more do thou strike, as thou hast greater might and power!"

An ancient form in the Roman state, was for the juror to hold a stone in his hand, and to imprecate a curse upon himself, should he swear falsely, in these words: "If I knowingly deceive, whilst he saves this city and citadel, may Jupiter cast me away from all that is good, as I do this stone." Polybius, than whom no author, ancient or modern, can be relied upon with greater safety, gives a full account of this oath, and calls it the oath "*Per Jovem Lapidem* *." This name, some say, was given to this peculiar oath, in consequence of a marble statue of Jupiter, which was in the Capitol. There was also, we learn, an altar on the left of the steps to the senate-house, on which solemn oaths were taken. It is with reference to this oath, that we find St. Augustin's memorable words, "The stone does not hear you swear, but God will punish you if you break your oath†." "That indeed by which you swear [the stone] is no God, nevertheless the only God will take cognizance of your oath."

I have dwelt, longer than my inclination would have led me to do, on the various forms by which either the name of the great God was directly polluted, or by which creatures were impiously made to share the honour due only to his holy name:

* Polyb. iii. 25. *Δία λίθον κατὰ τὴν παλαιὸν ἔθος.*

† Augustin, de Civitate Dei.

that, in the *Canterbury Tales*, we have repeated instances of the form of words now retained in our judicial oaths, "As help me God," "So God me save." Would that our own age were free from like profanation of his holy name!! But, we hear now this form of oath too commonly in our streets, often mingled with most bitter imprecations and horrible blasphemy.

Selden*, who quotes Mariana as his authority, mentions an oath used by the Spaniards when making a covenant, which is couched in terms very characteristic of the age of Chivalry: "If I first designedly fail of this oath, on that day, Ye Powers above torment my body in this life, and my soul in the next with horrid tortures. Make my strength and my words fail. In battle let my horse and arms and spurs and subjects fail me, when need is the sorest." To this both parties answered Amen, and sometimes confirmed this oath by sharing between them the consecrated host.

A most extraordinary form of oath (of the genuineness of which I know nothing, but that I found it in *The Book of Oaths*, reprinted in 1689) is recorded as having been taken by a Christian king, called the new King of Polonia, to the Turk, in the year 1573. "I promise and swear by the mighty God merciful, the maker of heaven and earth, and of all things that are therein—by these

* Selden, ii. 11.

What was the precise view taken by those who prescribed this oath, admits of doubt. Whether their abject flattery led them to profess that the safety of the emperor was dearer to them than their own; or whether they meant to attribute to him somewhat of the divine nature, is by no means evident. Perhaps some took the one view and some the other; whilst the majority probably had a confused notion merely of honouring him above the rest of mankind. Puffendorf adopts the first view, but in the same passage gives a sufficient warrant for the second. "For they did this [they swore by the safety of the emperor, and esteemed such an oath more strict and sacred than those in which the name of God is immediately invoked,] not as thinking there was any Divinity in their princes whilst alive, nor as imprecating their displeasure if any one spoke false; but because many of them, either in good earnest, or at least in flattery, intended hereby to show that they preferred their prince's safety to their own; and therefore looked upon it as a more horrible perjury to devolve the wrath of God upon *him* than upon *themselves*. So that the sense of those protestations was properly this:—*So may my prince be happy and safe, as I perform what I now promise, that is, unless I fulfil my engagements I desire the Divine judgments to light on my prince's head.*" At the same time Puffendorf makes the following quotation from

Vegetius, who is reciting the Christian Soldier's oath: "They swear by God, and by Christ, and by the Holy Spirit, and by the Emperor's Majesty, which, next to God, is to be loved and to be worshipped by mankind, for when our prince hath been once invested with the title of Augustus, we are to pay to him, as to *a present* and a *mortal God*, faithful devotion and most watchful service*."

Whilst we find the names of all their gods and goddesses, at various times appealed to, and hear, from eye and ear witnesses, of the practices unhappily prevalent in Christian Italy as relics of ancient times, we ought not to consider that information as the end of our inquiry, but carry on the examination further, with a view of learning our own national errors, and of amending what is wrong among ourselves. We shall find Protestant England very far from guiltless in this point. Tertullian†, in his work on Idolatry, laments, that even in his day, Christians used heathen oaths unwittingly. We do the same. He mentions the words "Mediusfidius and Mehercule," as instances of the bad habit. In Italy it is of very frequent occurrence to hear an oath sworn by the face of Bacchus, by the body of Bacchus, by Diana, &c. How often do we hear our own countrymen swear, "By Jove," "By my life‡," which is a very classical and a very unchristian oath.

* Puffendorf, iv. 2.

† Tert. de Idol. c. 20.

‡ "Ita vivam," Cic. Epist. ad fam, ii. 13.

always ready in the courts of justice, and the relics were forthcoming at the order of the judge.

Before this change, Heineccius informs us, there were as large a stock of various oaths in the North of Europe, as we have already seen elsewhere. We need not repeat many of them. Among the more strange, are "By Sion and mount Sinai." "By St. James's lance." "By the beard of Otto." One which he specifies, reminds me of the oath of William the Conqueror, "By the brightness of God," when that king swore that Roger de Britolio*, who had burnt the royal present which he had sent him at Easter, should never come out of prison during his life.

Among the Frisii, or Frieslanders, a most solemn oath was to take up a lock of hair with the left hand, and to lay two fingers of the right hand upon it. Heineccius tells us, that straws were used in their most solemn ceremonies, and that the Franks were accustomed to swear, holding straws in their hands†. Perhaps the practice of compelling the Jews to swear touching a pen‡ with their fingers, might have had its origin in this custom. They certainly thought it a mark of disgrace, and upon petition were relieved from it by modern laws in some States where the practice was still prevalent.

* Dugdale.

† How far the Roman word *Stipulatio* was derived from a similar custom does not, I think, satisfactorily appear.

‡ "Tacto Calamo."

Plutarch*, which, we fear, has not been without its match in modern times. It was the case of some young men, who had been seduced into a conspiracy, and who were compelled to swear a solemn dreadful oath, after tasting the blood of a murdered man, and laying their hands upon his vitals.

The practice of swearing a multiplicity of oaths in attestation of the same thing, and by various divinities, seems to have been very prevalent in pagan Rome, as it was in Greece. From this heathen custom probably, with innumerable other immoral and impious practices, Christian Rome derived it. And we may reasonably believe that the repetition of the oath, and the number of the names by which it was sworn, secured about the same quantum of additional truth and sincerity in both. Of this practice we have an example in the passage of Plautus above quoted; thus, too, in the satire of Juvenal† to which we have already referred: and when Medea would bind Ægeus by

* In Poplicola.

† Sunbeams and thunderbolts he boldly cites,
And all the darts of Cirrha's lord invites;
The spear of Mars he resolutely dares,
By the full quiver of Diana swears;
Pallas and all her terrors hear him brave,
And him, whose trident stirs the Ægean wave!
Whatever arms the arsenals of light
Prepare, for punishment of impious wight,
He dares them all!—

Sat. xiii. 75. BADHAM'S *Translation*.

a solemn oath, and he says*, “Enumerate the gods, by whom I shall swear,” her reply is, “Swear by the sun, my father’s father, putting also together with him the whole race of the gods.”

A very extraordinary form of oath, by which the astronomer Vettius Valens bound his disciples to secrecy, is quoted by Selden†: “I adjure thee, most honoured brother and your fellow students, by the starry vault of heaven, by the circle of the zodiac, the sun, the moon, and the five wandering stars (by which universal life is governed), by Providence itself, and Holy Necessity, that you will keep these things secret, nor divulge them except to those who are worthy, and are able to make a just compensation to me, Valens. To those who observe this may all the above-named Gods be propitious, be their life strong, and all things succeed well. On those who break this oath may the contrary fall; may the earth not bear their step, nor the sea allow them to pass over it. Be they childless; be their mind blinded; and though cultivated, let it bring them a life of disgrace, devoid of good. And IF THERE BE ANY RETRIBUTION of good and bad after death, there also partake they of the same fate.” A curious oath, not very unlike this, either in the number of divinities summoned to attest it, or in the identity of some of them,

* Med. 740.

† Selden, ii. 10.

is recorded by Polybius as having been taken by the contracting parties in the league between Hannibal and the representatives of Carthage on the one part, and Xenophanes, the ambassador of Philip, for his master and the Macedonians on the other part. "In the presence of Jove and Juno and Apollo, in the presence of the tutelary deities of the Carthaginians, and Hercules, and Iolaus; in the presence of the Gods who accompany hosts to battle, and the sun, and the moon, and the earth; in the presence of rivers, meadows, and waters; in the presence of all the Gods who preside over Carthage; in the presence of all the Gods who preside over Macedon and Greece; in the presence of all the Gods, who take the charge of wars, as many as are present and watch over this treaty, &c*."

So in the times of superstition and darkness, professing Christians would swear by the Almighty, and by angels and archangels, and saints, and the pope's see, in attestation of one and the same thing. They swore, too, on the bodies and tombs of the saints; and often went, for this purpose, from one sepulchre to another. For example, in the year 757, Tassilo* promised fealty to King Pepin, and to his sons Charles and Carloman, on the body of St. Denys, and not only *there* (ibi), but also on the

* Polyb: vii. 2.

† Eginhard de Tassilone. See Du Cange, vol. iii. 1611.

earnestly would I press upon all magistrates to think seriously and practically on all that is conveyed in that sentiment !

always now fixed after some interval for the making of a solemn oath of this kind in many of the civil courts on the Continent.

CHAPTER VII.

ON OATHS AS AT PRESENT ADMINISTERED IN
DIFFERENT COUNTRIES.

ON entering upon the next subject of inquiry, how are oaths administered in modern times, differing, as I have most reluctantly been compelled to do in some points from Archdeacon Paley, I must acknowledge that I cannot help agreeing with him altogether in this sentiment:—"The forms of oaths in different countries are very different, but in no country in the world I believe are they worse contrived, either to convey the meaning or impress the obligation of an oath, than in our own." I have already confessed this to be the inference to which patient inquiry and calm reflection have led me, at least as to the careless indifference with which oaths are often administered in public among us, compared with the more solemn manner usually observed in other countries. Lamentably full of superstition as are many of the forms which we must now describe; some revolting to our best feelings as Christians, others degrading to the very character of men, in that one point of conveying the meaning of an oath, and impressing its obligation, I cannot find one more objectionable than our own. Those who have ever engaged in inquiries of this nature,

are aware of the difficulty of gaining such information as deserves credit, and whilst I acknowledge the scanty supply which I have been enabled to procure, I trust that what is offered may be relied upon.

CHINESE OATHS.

CHINESE witnesses have been examined repeatedly in our courts of justice, within these few years. They have different modes of attesting the truth. One form of oath among them, is to write sacred characters on paper, which they afterwards burn, praying that the witness may be so burned if he swear falsely. Another is, the breaking of a saucer, and praying that so the deponent may perish, if he swerves from the truth*.

The most solemn and sacred is, the cutting off a cock's head with a similar imprecation. Another is, the ceremony of burning straw.

OATHS IN INDIA.

I HAVE had the satisfaction of receiving a letter from the very highest authority on this subject, from which the following is an extract. "In the Supreme Courts of Calcutta and Madras, Chris-

* This second form has been repeatedly observed in the Old Bailey, as I have had from eye-witnesses, one of whom presided when the oath was so taken.

anger uncontrolled by reason, and impetuosity of temper driving them on to violence, the only expedient left is to restrain them by invisible terrors and such-like alarming fictions. The ancients consequently, in my opinion, brought in their doctrines about the Gods, and the affairs of Hell, for the belief of the people, not at random, and by chance. But, much rather do they of the present day seem to be acting with rashness and a want of reason in rejecting them. One consequence, out of many, is this; that whilst, among the Greeks, if the public officers of state have the value of only one talent intrusted to them, let them have ten sureties, and as many seals, and twice as many witnesses, they cannot be faithful to their trust; among the Romans, whether in the magistracies or embassies, let them have never so large a sum in their hands, they discharge their trust in consequence of the pledge given merely by their oath*; and whilst, among other people, it is rare to find a man abstaining from peculation, and guiltless of wrong, among the Romans it is rare to find any one detected in an act of dishonesty†.”

* This reference of the honesty of the Romans to their reverence of an oath, must not be forgotten, whenever the expediency of retaining Oaths of Office may be under consideration. I think, however, that Polybius is not in the least contrasting the value of an oath with a bare promise among the Romans, but Roman integrity, as the offspring of a religious principle, with the perfidy of the irreligious Greeks.

† Polyb., b. vi., c. 56.

vailed, of administering oaths to Hindu witnesses. Under the thirteenth section of the Charter, oaths are to be administered to persons who are not Christians, in such manner and form as the court shall esteem most binding on their consciences; and the court invariably insisted on all Hindu witnesses, with the exception of those who were Pundits, being sworn on the water of the Ganges. The grand jury frequently represented, and the judges invariably admitted the obstacles which this practice created to the administration of justice, and the hardships it occasioned to conscientious individuals. Respectable witnesses were deterred from entering the court, and those who came, were not unfrequently committed, because they would not act as their conscience forbade them; and I have more than once seen the anomaly of a judge committing a witness, while he gave him credit for the conduct by which the punishment was incurred. Yet no attempt was made to remedy the evil; and, from the institution of the court until Sir Charles Grey became Chief Justice, this practice so injurious to the public, so oppressive to individuals, was reprobated, deplored, and adhered to. Almost the first act of the present Chief Justice was to exercise that power which it is obvious the charter intended to confer, and it was directed that the witness should be sworn in whatever manner was most binding on, and not in that which most outraged

his conscience* ; and now, if he objects to the Ganges' water, the Pundit administers the oath in some other form." Mr. Wynne's Act established the new practice as law†.

"In other parts of India, the form of oath amongst the natives varies. Sir James Mackintosh told me that at Bombay he had a cow brought into court, that a witness might have the satisfaction of swearing with its tail in his hand. And amongst the Jungle tribes, whom I do not believe, however, to be orthodox adherents to Brahminical doctrines, it is usual that the witnesses should be sworn on a tiger's skin ; and they firmly believe that those who break their oaths, become food for

* The late Ram Mohun Roy, when he appeared before Sir Edward East to be sworn to an answer in equity, objected to be sworn on the Ganges' water, and moreover, required to be sworn laying his hand on the Vedas, as we are sworn on the New Testament, declaring that he considered that mode of swearing as the most solemn and binding. The proposal being novel, Sir Edward knowing that Ram Mohun Roy had made himself obnoxious to the strict Hindus, referred the question to the Pundits, who agreed that the oath might be so administered to him as a Hindu, and a Brahmin. He was so sworn ; and a strong sensation was produced by it out of doors, the matter having been at first misrepresented by a report, that he had sworn upon our Scriptures. The Pundits were, thereupon, directed by Sir Edward to make known the truth of the case, without delay.

† The Act to which we have already referred as having confounded the Moravians with the Quakers.—9 G. IV., c. 74.

tigers. Amongst themselves, and in private life, it is not uncommon for the Hindus, when they wish to bind any one to the performance of some atrocious deed by a very solemn oath, that something, such as a sword, or knife, should have *pooja* (prayer, sacrifice and anointment,) performed to it by a person of Brahminical caste, until it is supposed to become instinct with some divine or demoniac presence, and then the party is sworn upon it."

I have been also favoured with additional particulars from a very well-informed friend, who has spent many years in India. The close bond of union between that vast portion of the old world, and our own island, would of itself justify my dwelling longer upon this part of our subject, than might in strictness of argument be required. The points of chief interest in his report, I have the satisfaction of inserting in this place.

The laws of Menu provide for the delivery of evidence on oath in judicial matters*.

"Let the judge cause a priest to swear by his veracity†; a soldier, by his horse, or elephant, or weapons‡; a merchant, by his kine, grain and

* Sir W. Jones's Translation of the Instit. of Menu, ch. viii., s. 113.

† Brahman—how like the "Verbum Sacerdotis" of Christendom!

‡ Kshattrea—Exactly the oath of the ancient European warriors.

“Epicharmus says that winds, the sun, the earth, water, fire, stars, are the Gods.” When we hear that Socrates swore by the dog, the comment upon that philosopher’s practice, by the impious Lucian, must not be forgotten; “What think ye? does not the dog appear to you a divinity? See you not how great in Egypt is Anubis, and in heaven Sirius, and among the infernals Cerberus *?”

A very strange assertion startles us in the Greek

* On this subject, however, I cannot speak without considerable doubt, as to the general conclusion, which upon the whole, I have been induced to adopt. There are many contradictory facts and opinions on record. Spencer (*De Leg. Heb. i., c. 11.*) takes the same view with that which I have adopted in the text. Among other expressions bearing the same way, he says, “The Israelites departing from the law and worship of God so frequently, swore by false Gods, because they were considered in that manner to ascribe divine honour and worship to those gods. And perhaps, he will not err from the truth who shall conclude that, the Israelites so often swore by such Gods, with a view of conforming themselves to the manners of the Egyptians, which they held in high estimation. For, as Pliny relates, the Egyptians in their oaths reckoned parsley and onions among their Gods, and paid them divine honours.” The question is also discussed at some length by Puffendorf, who had adopted a different view from the one which I have offered in the text. “Such forms, he says, we are to esteem as merely jocular. They swore by these not as by Gods, but to avoid swearing by the Gods, when by the practice of the generality of men, it was grown into an ill custom to apply oaths as the supplemental ornament of speech.” He then refers us to Apollonius in confirmation of his own view of the subject; and to Apuleius and Bishop Sanderson, as having espoused the opposite opinion.—B. iv. c. 2.

righteous God, who is acquainted with what is hidden," &c.

The punishment of false-swearing in judicial matters is left to the discretion of the judge. Branding and public exposure may be adjudged.

My friend further observes:—The population of the territories under British rule in India consists chiefly of Mahomedans and Hindus. The moral education of both people is so entirely neglected, their religion is so much matter of form and ceremony, that it cannot be a cause of surprise, if oaths administered by foreign judges, who have no reverence for the form in which they are taken, have little binding power on the consciences of the swearers. The codes of both religions sanction falsehood and deceit in certain cases; and in the application of such a principle, the limits within which the law would confine the indulgence would readily be overstepped, if self-interest, friendship, or enmity should present even slender inducement to the sacrifice of truth.

The practice of the courts established by the India Company for the administration of justice to the nations of Hindostan is regulated by local laws, enacted by the governments of the several presidencies of Calcutta, Madras, and Bombay. The courts administer oaths in the usual English form of words. The Mahomedan takes the Korán in his hand, and after repeating the oath kisses the

book, and then places it on his head. The Hindus are mostly sworn on the leaf of the sweet-basil, which is placed by a Brahmin in the hollow of the hand, with some water of the Ganges,—the leaf and water are swallowed by the swearer; but this and other modes are not of very binding effect on their conscience. Veracity is not considered essential to respectability of character; and a Hindu, in general, considers rather what evidence will best serve the cause in which he is interested, than whether what he is about to depose be true or false. Our local regulations, which provide for the administration of criminal justice, according to the Mahomedan law (subject to many important modifications), declare perjury to be punishable by exposure, by marking on the forehead of the culprit a word signifying “liar*,” by whipping, and by imprisonment, with hard labour, for not more than seven years. A native of India, particularly a Hindu, is not much disgraced by having been sentenced to punishment for perjury. If, for example, the convict were a priest of reputed sanctity, his followers would not fall off on that account.

* In Rome they branded a false accuser in the forehead with a Greek κ, the first letter of *Calumniator* or *Kalumniator*.

bold and heroic genius of the tragedian, puts the ceremony before our eyes, with the life and colouring of a master-pencil* :—

Seven valiant chiefs
Slew on the black-orb'd shield the victim-bull,
And, dipping in the gore their furious hands,
In solemn oath attest the god of war,
Bellona, and the carnage-loving power
Of terror; sworn from their firm base to rend
These walls, and lay their ramparts in the dust,
Or dying, with their warm blood steep this earth.

Sadly degrading as these customs are to our race,—customs which remind us that in *religion*, *when the mind is not enlightened by revelation*, there is much less difference than most of us perhaps are accustomed to consider, between the civilized countries of the world and those which are called barbarian, still I doubt much whether these practices have not been equalled in their absurdities, and impieties, by such as have in former days prevailed in Christendom, telling us how little a *corrupt Christianity in its worst form* ranks above heathenism. Certainly if the guilt increases in proportion to the light against which the offence is committed, a comparison between these follies of pagan times, and the frequent prostitution of the

* Septem. v. Theb. 42. I am not acquainted with any evidence of such a custom having prevailed among the Greeks, subsequently to the heroic ages.

most sacred rites of our holy religion in past ages, leads us to serious reflections on the inconsistent conduct of men, who profess to receive the Gospel of truth, and peace, and charity.

CHAPTER VI.

OF THE FORMS AND HISTORY OF OATHS AMONG
CHRISTIANS IN PAST AGES.

WITHOUT repeating what we have already alleged under a previous branch of our inquiry, when we spoke of the lawfulness of Christian oaths, and the present state of them in our own country; we may observe, in tracing their history among professors of the Gospel, that the probability is very strong, that the primitive Christians habitually shrank from taking an oath. If they swore at all, it was on some very solemn and extraordinary occasion. Their general rule was not to swear at all. But (as Augustin*, in a passage already quoted, acquaints us, in terms of great regret and lamentation,) the ancient custom of swearing in process of time prevailed among Christians, as the fruit of a most corrupt state of moral principle and feeling. It was admitted however, “not in order to check the progress of wrong, but that perjury also might be added to our crimes.”

Still the readiness with which Christians came at last to swear was, as it appears, the work of time, spreading gradually among them as they mingled more and more with their Pagan neighbours, and

* Aug: de Civitate Dei.

departed further from their original principles. For some time they only called, "The truth to witness," regarding that form as a solemn oath, the appeal being made to God, who is himself "The Truth." "Whatever we speak, as in the presence of God, says Athanasius, "we Christians consider as spoken under an oath*." But this practice of swearing, "By the truth," was, in after ages, perverted into a cloak for perjury, as we are expressly told in the laws of Charlemagne†. A translation of the whole section to which we refer will not, I hope, be unacceptable to my readers.

"All men are to be diligently admonished to avoid perjury, not only when the oath is sworn on the Holy Gospel, or the altar, or the relics of saints, but also in common conversation. For there are some who swear 'By love and by truth,' and avoid an oath on the name of God, ignorant that God is the same as love and truth; as the Apostle John says, 'God is love,' and also our Lord himself, in the Gospel says, 'I am the truth,' whoever, therefore, swears by love and truth, swears by God. Also must we take care not with pharisaical superstition to honour the gold more than the altar, lest the Lord should say to him [who does so], 'Thou fool, which is the greater, the gold, or the altar which sanctifieth the gold.' It seems, besides,

* Athan: ad Emp: Const: Apol:

† Charlemagne, Capit. lxiii.

right to us that he who has to swear by the saints, should swear fasting, with all honesty and in the fear of God; and let every one be assured that he will give an account to God, wherever it be, whether in the church or out of the church."

It is moreover certain, notwithstanding the first reluctance of Christians to take an oath, that the practice of swearing upon the Gospels became, after no very long period, generally prevalent in Christendom. Ancient writers tell us that Christians borrowed this practice from the Jews, who were accustomed to swear laying their hand upon the book of the Law*, regarding that as the only binding oath. Even in as ancient a church historian as Sozomenus we read that, "Euagrius swore to the Emperor Theodosius, laying his hand on the holy Book of the Gospels†." The celebrated Pelagius, when charged with some evil designs against Vigilius, disclaimed them by an oath which he swore, holding the cross and the Gospel on his head. Even the very form which is now prevalent in our courts of justice, that of holding the book and kissing it, was of very early introduction into Christendom. Arsenius‡, an ancient bishop, records of Ingeltrude, wife of Boson, that she swore an oath to Pope Nicholas, in these words: "I, Ingeltrude, swear to my Lord Nicholas, the chief

* See Selden, II., 11.

† Sozomenus de Euagrio.

‡ Du Cange, 1607.

pontiff and universal pope, by the Father, the Son, and the Holy Ghost, and these four Evangelists of Christ our God, which I *hold in my own hands, and kiss with my mouth,*" &c.

The gospels were generally put upon the altar, and the juror's hand laid on them. Sometimes, though at a much later date, they swore upon the missal, or mass-book, at other times by the canon or rule of the church in which they were, sometimes by the relics. It would be endless to enumerate the different modes by which these appeals to heaven were made, but it may not be unprofitable or uninteresting to specify some of them*. A letter, in which those who have the good fortune of knowing him, see only the usual marks of the author's profound and various knowledge, but which otherwise might be cited as an instance of uncommon research, written by Sir Henry Ellis to the Earl of Aberdeen, as president of the Society of Antiquaries, "On the History of Bracelets," contains a passage of great interest in our present inquiry. "Arngrim Jonas, in his work on Iceland, speaking of the pagan rites which were used in the

* Attempts we find, were often made by authority, to check such oaths as were blasphemous, or savoured strongly of paganism. It was made a capital offence to swear "By the hair or the beard of God." "Ultimo supplicio subjiciatur." Ivon: xii. 32. By another decree, similar oaths were forbidden to a clergyman on pain of deposition, and to a layman on pain of incurring the anathema of the Church.

chief temple of Southern Iceland, in the isle of Kialarnes, describes a bracelet of twenty ounces weight, which was kept upon the altar, which being sprinkled by the blood of victims, was touched by those who took any solemn oath. He says it was either of silver, or of silver and brass mixed. He adds, in another page, that for this purpose it was worn on the judge's arm during trials. Arngrim Jonas's bracelet," continues Sir Henry, "reminds me of a very remarkable passage in the Saxon chronicle under the year 876, where, when the Danes made peace with the English Alfred, at Wareham, in Wessex, they gave him the noblest among them as hostages, and swore an oath to him upon the holy bracelet." I must not withhold here what has since fallen in my way, that some represent the oath "*in armilla*" to mean, swearing by the *knocker of the abbey gate*, or rather perhaps the ring by which the door was pulled to: a practice which appears certainly to have prevailed. Others, probably from an ignorance of such facts as Sir Henry Ellis has put together, confuse this oath with the form very general among the northern nations in ancient days, of swearing *by their arms*. We may observe, by the way, that this oath *upon the arms* was not, as some* have groundlessly supposed, by the *instruments of the sacrifice*, but by *the warrior's arms*, generally blessed by the priest; an

* See Macer.

oath, with many others, forbidden in the sixth synod*.

In our own country no more solemn oath could be taken than one sworn "by the abbey of Glastonbury." This is distinctly asserted in the Chronicle of Robert of Gloucester.

And greater oath none is
Than by the old church of Glastonbury, whoso deep oath
name,
For there was church four hundred year, e'er St. Austin
hither came.

The history of every country supplies us with too great an abundance of oaths varied in numberless forms. Kings and subjects, priests and lay people, christians and infidels, men and women alike, seem to have thought it their privilege to choose their own oath. Whoever feels disposed to examine this part of our subject further, will find much information in Warton's *Observations on Chaucer*. The *Canterbury Tales* offer us a melancholy picture of the state of conversation among our forefathers in this respect. Some of their oaths are scarcely intelligible to us now without considerable research. Others are curious though familiar

* Pope Nicholas, towards the latter part of the ninth century, in answer to an application for his guidance in various points, mentions the custom of bringing out a broad sword (if the word *spatha* is to be so interpreted) and swearing by it; and he enjoins them to swear by God only, and on the Gospel. Lab: Conc: vol. ix.

to the generality of readers. The priest says—

For on my portos here I make an oath ;

meaning the case in which his breviary, or prayer-book, was kept. The giant is made to swear by the Saracen Deity Termagaunt*, whose violent and tyrannical temper has given a name to that idol's representatives among us. The greatest oath sworn by the Prioress, is “by St. Eloy.” Among others we find “by St. Paul's bell ;” “by the good rood,” *i. e.*, the cross ; “by God's book ;” “by Christ's foot ;” “by God's arms two ;” “by nails and by blood ;” with much which savours strongly of blasphemy, and from which piety recoils. “By ale and by bread” is an oath which corresponds with one of those trials by ordeal which so long disgraced our country, when the juror solemnly imprecated upon himself, in case of guilt, the curse of his food choking him ; whence, in many parts of the country at this day, it is a saying, if one of the company at a meal indulges in an untruth, “Take care, your meat will choke you†.” We may observe

* The more probable origin of this word is considered by some, to be Tervagans, an epithet of Diana, going by three names. Termagaunt or Trivigant is the name of a deity often mentioned in old romances.

† Trials by drinking water, &c., were very common through the Gentile world. (Guel Salden Otia Theolog. Exercit. v. 24.) May they not have been derived from Numb. v. 24 ? See also Sir John D'Oyly's Sketch of the Constitution of the Kandyan kingdom ; and Lander's Records of Clapperton, vol. ii., c. 18.

that, in the *Canterbury Tales*, we have repeated instances of the form of words now retained in our judicial oaths, "As help me God," "So God me save." Would that our own age were free from like profanation of his holy name!! But, we hear now this form of oath too commonly in our streets, often mingled with most bitter imprecations and horrible blasphemy.

Selden*, who quotes Mariana as his authority, mentions an oath used by the Spaniards when making a covenant, which is couched in terms very characteristic of the age of Chivalry: "If I first designedly fail of this oath, on that day, Ye Powers above torment my body in this life, and my soul in the next with horrid tortures. Make my strength and my words fail. In battle let my horse and arms and spurs and subjects fail me, when need is the sorest." To this both parties answered Amen, and sometimes confirmed this oath by sharing between them the consecrated host.

A most extraordinary form of oath (of the genuineness of which I know nothing, but that I found it in *The Book of Oaths*, reprinted in 1689) is recorded as having been taken by a Christian king, called the new King of Polonia, to the Turk, in the year 1573. "I promise and swear by the mighty God merciful, the maker of heaven and earth, and of all things that are therein—by these

* Selden, ii. 11.

holy evangelists, by holy baptism, and by Christian faith—that all those things that I know shall be manifested to high and mighty Soliman Emperor of the Turks, whose empire God certify. I will be friend to his friends—enemy to his enemies. I will be a redeemer of his captives out of the hands of his enemies—there shall be no fraud or deceit on my part. If I shall neglect so to do, I will be an apostate—a forsaker of the holy commandments of the Gospel of Christians. I will say the Gospel is false and untrue. I will cross [oppose] both altar and priest—I will slay swine upon the font. I will deny the holy Trinity, and worship them [the swine]. I will pollute the altar, and will receive the curse of the saints, even as God shall behold me from heaven.”

Here I cannot but offer a remark upon the comments of two writers, each of much note in his own department, the modern Cocceius in his *Comments on Grotius*, and Donatus in his *Notes upon Terence*. Cocceius attempts to justify Christians in swearing by a creature; whilst the very argument which he employs, proves only that the practice is one of the countless snares laid for perjury*. And Donatus “describes” an oath “by Castor and Pollux,” as “an ornamental form of swearing becoming females.” Disgraceful as is an oath, when uttered in common

* See Grotius, *De Jurej.*

swearing by a man, it strikes us with a hundred-fold more disgust when it comes from the lips of a woman. History abounds with instances of illustrious females indulging in this disgraceful and unchristian habit. We may well draw a veil over the days when such practices were fashionable. “Becoming females!” does Donatus say? It becomes them just as much as intoxication, and as immodesty would become them; it suits the female character just as cowardice is an ornament to men*.

GERMANY AND OUR SAXON ANCESTORS.

HEINECCIUS informs us, that from the time the Saxon and Suevic laws prevailed in Germany, all the ancient forms of oaths became gradually obsolete, and scarcely is mention made of any other, than laying the hand on relics, or the Gospels, or an altar, or a cross. To prevent other and heathenish oaths it was enacted, that whoever swore in any other than one of the prescribed forms, should be excommunicated, and be punished with thirty-nine stripes. It was provided that the juror should place his right foot upon the lower step of the altar, when he swore by a relic. The altar was

* Dr. Sanderson, in discussing a point of casuistry, refers to language very nearly coincident with this sentiment of Donatus,—“When any one for *honour* and *courtesy*, as the Casuists speak, swears rashly on a trifling subject.”—Case 54.

always ready in the courts of justice, and the relics were forthcoming at the order of the judge.

Before this change, Heineccius informs us, there were as large a stock of various oaths in the North of Europe, as we have already seen elsewhere. We need not repeat many of them. Among the more strange, are "By Sion and mount Sinai." "By St. James's lance." "By the beard of Otto." One which he specifies, reminds me of the oath of William the Conqueror, "By the brightness of God," when that king swore that Roger de Britolio*, who had burnt the royal present which he had sent him at Easter, should never come out of prison during his life.

Among the Frisii, or Frieslanders, a most solemn oath was to take up a lock of hair with the left hand, and to lay two fingers of the right hand upon it. Heineccius tells us, that straws were used in their most solemn ceremonies, and that the Franks were accustomed to swear, holding straws in their hands†. Perhaps the practice of compelling the Jews to swear touching a pen‡ with their fingers, might have had its origin in this custom. They certainly thought it a mark of disgrace, and upon petition were relieved from it by modern laws in some States where the practice was still prevalent.

* Dugdale.

† How far the Roman word *Stipulatio* was derived from a similar custom does not, I think, satisfactorily appear.

‡ "Tacto Calamo."

The low Irish of the present day, in their more solemn transactions among each other, ratify their engagement by swearing upon a copper or silver coin, generally upon a halfpenny or a sixpence, which they kiss, using these words; “By the *oorth* (worth—not value but virtue) of this coin, I swear:” Heineccius tells us, that this was an old German custom before the introduction of Christianity. And the ancient Byzantines swore by their own copper coins*.

One circumstance mentioned by Heineccius, was to myself as interesting as it was new. By the laws of the Alamanni the males used to swear, raising their hand either to heaven, or the altar, or the book, or the case of relics upon the altar; whilst females swore laying their hands upon their bosoms. They called it, “The oath by the bosom.” This form was observed in modern Germany, at least, till our author’s time: whether it is still retained I know not. Its origin is very curious. Women and boys were generally accustomed to carry on their bosom, suspended from their neck, a small copy of the Gospel: so the hand when laid upon the breast, was in reality laid upon the Gospel. Priests swore in this manner, (as indeed they do to this day in Spain and in some parts of Italy, particularly in the Roman States,) and Heineccius hints,

* Spencer, lib. ii.

that this privilege was granted to the priests, because they were supposed to have the Word of God written in their hearts. Be this as it may, it is a remarkable fact, that Chrysostom* speaks distinctly of the custom generally prevailing in his time, of women and young persons carrying about with them the Gospels on their bosom, hanging from the neck. This same most interesting author, (Heineccius,) describes an imposing scene of which he was an eye-witness when a boy, in so graphic a manner, that I cannot help attempting to translate it verbally. How strong a contrast between this, and the oath on a charge of murder, as now usually administered to a witness in the box at the Old Bailey! "I remember when I was a boy, I was present when a man suspected of adultery, purged himself from the charge by oath. I there saw, not without somewhat of horror, all the windows closed with curtains, and on the table at which the judge and the ministers of the Church sate, there was placed a Bible, a skull taken from a skeleton, the image of Christ nailed to the cross, and, unless I am mistaken, a sword and iron gloves; tapers glimmering here and there, the accused on his knees, holding up his fingers, and binding himself by the oath. The doors were thrown open, and all persons admitted promiscuously."

* Chrys. Hom. xix., ad Pop. Antioch.

Such a ceremony as this, not only must be regarded as unnecessary and superstitious, however powerfully it must have worked upon the imagination; but it would evidently be impracticable, where there is such an overwhelming multiplicity of criminal proceedings as in England. Still I question whether of the two extremes, the sadly careless manner in which our oaths are administered, is not the less justifiable.

I cannot leave this subject without contrasting the ancient practice in Germany, with the instant unceremonious tendering of an oath in our public offices the very moment a complainant appears; though I am fully aware that a literal following of their precedent would be absurd and impracticable: but is there no middle way? “When that oath was to be administered [he is speaking of one which the judges deemed it expedient, for the cause of justice, to be put to the defendant,] it was not given on the instant, (*for it appeared to be an affair which required some delay, since it was connected WITH DANGER TO THE SOUL,*) but a day was fixed, often after twelve nights, when he should be compelled to take the oath, or lose his cause, &c*.” Most

* I cannot refrain from quoting the original words; would to God the sentiment, in its full true spirit, were acted upon in England! “Videbatur enim res, quæ cum animæ periculo conjuncta esset, moram aliquam requirere.” A day is

earnestly would I press upon all magistrates to think seriously and practically on all that is conveyed in that sentiment !

always now fixed after some interval for the making of a solemn oath of this kind in many of the civil courts on the Continent.

CHAPTER VII.

ON OATHS AS AT PRESENT ADMINISTERED IN
DIFFERENT COUNTRIES.

ON entering upon the next subject of inquiry, how are oaths administered in modern times, differing, as I have most reluctantly been compelled to do in some points from Archdeacon Paley, I must acknowledge that I cannot help agreeing with him altogether in this sentiment:—"The forms of oaths in different countries are very different, but in no country in the world I believe are they worse contrived, either to convey the meaning or impress the obligation of an oath, than in our own." I have already confessed this to be the inference to which patient inquiry and calm reflection have led me, at least as to the careless indifference with which oaths are often administered in public among us, compared with the more solemn manner usually observed in other countries. Lamentably full of superstition as are many of the forms which we must now describe; some revolting to our best feelings as Christians, others degrading to the very character of men, in that one point of conveying the meaning of an oath, and impressing its obligation, I cannot find one more objectionable than our own. Those who have ever engaged in inquiries of this nature,

are aware of the difficulty of gaining such information as deserves credit, and whilst I acknowledge the scanty supply which I have been enabled to procure, I trust that what is offered may be relied upon.

CHINESE OATHS.

CHINESE witnesses have been examined repeatedly in our courts of justice, within these few years. They have different modes of attesting the truth. One form of oath among them, is to write sacred characters on paper, which they afterwards burn, praying that the witness may be so burned if he swear falsely. Another is, the breaking of a saucer, and praying that so the deponent may perish, if he swerves from the truth*.

The most solemn and sacred is, the cutting off a cock's head with a similar imprecation. Another is, the ceremony of burning straw.

OATHS IN INDIA.

I HAVE had the satisfaction of receiving a letter from the very highest authority on this subject, from which the following is an extract. "In the Supreme Courts of Calcutta and Madras, Chris-

* This second form has been repeatedly observed in the Old Bailey, as I have had from eye-witnesses, one of whom presided when the oath was so taken.

tians of every denomination are sworn on the Gospels; Jews on the Old Testament, Mahometans on the Koran. Chinese with the ceremony of burning some straw, and dashing a piece of china or earthenware on the ground, which I understand to be significative of the fate which is imprecated on the violation of the oath. The oaths of Hindus, until I became Chief Justice of the Court of Calcutta, were usually sanctioned there by the witness drinking holy water from the Ganges, and eating of the leaves of a sacred plant, the water and the leaves being both administered by a Brahmin. High caste Brahmins, but none else, were allowed to be sworn by the recital to them by a Pundit of a form laid down in their Shasters, or Holy Books. Very many took the oath on the Ganges' water with great reluctance, declaring that it was forbidden by their religion, and that they incurred sin by doing it. The judges, however, thought it the most solemn and awful form, and as such the most binding on their conscience. Having ascertained from the Pundits, to my own satisfaction, that the oath upon the Shasters was equally binding, I allowed all to be sworn in that way, who scrupled to be sworn on the Ganges' water."

"The following extract from a preface to a book, on the Practice of the Court, is an account of this change. 'A very striking example of this may be furnished in the practice, which till lately pre-

ailed, of administering oaths to Hindu witnesses. Under the thirteenth section of the Charter, oaths are to be administered to persons who are not Christians, in such manner and form as the court shall esteem most binding on their consciences; and the court invariably insisted on all Hindu witnesses, with the exception of those who were Pundits, being sworn on the water of the Ganges. The grand jury frequently represented, and the judges invariably admitted the obstacles which this practice created to the administration of justice, and the hardships it occasioned to conscientious individuals. Respectable witnesses were deterred from entering the court, and those who came, were not unfrequently committed, because they would not act as their conscience forbade them; and I have more than once seen the anomaly of a judge committing a witness, while he gave him credit for the conduct by which the punishment was incurred. Yet no attempt was made to remedy the evil; and, from the institution of the court until Sir Charles Grey became Chief Justice, this practice so injurious to the public, so oppressive to individuals, was reprobated, deplored, and adhered to. Almost the first act of the present Chief Justice was to exercise that power which it is obvious the charter intended to confer, and it was directed that the witness should be sworn in whatever manner was most binding on, and not in that which most outraged

his conscience*; and now, if he objects to the Ganges' water, the Pundit administers the oath in some other form." Mr. Wynne's Act established the new practice as law†.

"In other parts of India, the form of oath amongst the natives varies. Sir James Mackintosh told me that at Bombay he had a cow brought into court, that a witness might have the satisfaction of swearing with its tail in his hand. And amongst the Jungle tribes, whom I do not believe, however, to be orthodox adherents to Brahminical doctrines, it is usual that the witnesses should be sworn on a tiger's skin; and they firmly believe that those who break their oaths, become food for

* The late Ram Mohun Roy, when he appeared before Sir Edward East to be sworn to an answer in equity, objected to be sworn on the Ganges' water, and moreover, required to be sworn laying his hand on the Vedas, as we are sworn on the New Testament, declaring that he considered that mode of swearing as the most solemn and binding. The proposal being novel, Sir Edward knowing that Ram Mohun Roy had made himself obnoxious to the strict Hindus, referred the question to the Pundits, who agreed that the oath might be so administered to him as a Hindu, and a Brahmin. He was so sworn; and a strong sensation was produced by it out of doors, the matter having been at first misrepresented by a report, that he had sworn upon our Scriptures. The Pundits were, thereupon, directed by Sir Edward to make known the truth of the case, without delay.

† The Act to which we have already referred as having confounded the Moravians with the Quakers.—9 G. IV., c. 74.

tigers. Amongst themselves, and in private life, it is not uncommon for the Hindus, when they wish to bind any one to the performance of some atrocious deed by a very solemn oath, that something, such as a sword, or knife, should have *pooja* (prayer, sacrifice and anointment,) performed to it by a person of Brahminical caste, until it is supposed to become instinct with some divine or demoniac presence, and then the party is sworn upon it."

I have been also favoured with additional particulars from a very well-informed friend, who has spent many years in India. The close bond of union between that vast portion of the old world, and our own island, would of itself justify my dwelling longer upon this part of our subject, than might in strictness of argument be required. The points of chief interest in his report, I have the satisfaction of inserting in this place.

The laws of Menu provide for the delivery of evidence on oath in judicial matters*.

"Let the judge cause a priest to swear by his veracity†; a soldier, by his horse, or elephant, or weapons‡; a merchant, by his kine, grain and

* Sir W. Jones's Translation of the Instit. of Menu, ch. viii., s. 113.

† Brahman—how like the "Verbum Sacerdotis" of Christendom!

‡ Kshattrea—Exactly the oath of the ancient European warriors.

gold* ; a mechanic or servile man, by imprecating on his own head, if he spake falsely, all possible curses†." These are the four great divisions of the Hindus.

On occasions of great solemnity, it is prescribed that the evidence be taken under the sanction of one of five methods of ordeal.

MAHOMEDAN LAW.

THE Mahomedan Law allows the sanction of the Divine name both in ratification of vows, and in confirmation of judicial evidence. It also provides for the expiation of the breach of vows, and false-swearing,—by alms, fasting, and the manumission of slaves. The concealment of truth, which may affect the character, or cause the punishment of a brother mussulman, is declared praiseworthy. An oath is declared not worthy of credit, unless it be taken in the name of God ; and it is incumbent on the Kaje to desire the swearer to corroborate his oath, by reciting the attributes of God, as,—“ I swear by the God, beside whom there is no other

* Vysya—The ancient Greeks, when in traffic, used to swear by “Mercury of the Market.”

† Sudra—The expressions of Menu’s Law here remind me of a passage in Antiphon, on the murder of Herodes, c. 130. “You ought to swear the most solemn and most binding oath, imprecating on yourself, and your race, and your house utter-ruin.”

righteous God, who is acquainted with what is hidden," &c.

The punishment of false-swearing in judicial matters is left to the discretion of the judge. Branding and public exposure may be adjudged.

My friend further observes:—The population of the territories under British rule in India consists chiefly of Mahomedans and Hindus. The moral education of both people is so entirely neglected, their religion is so much matter of form and ceremony, that it cannot be a cause of surprise, if oaths administered by foreign judges, who have no reverence for the form in which they are taken, have little binding power on the consciences of the swearers. The codes of both religions sanction falsehood and deceit in certain cases; and in the application of such a principle, the limits within which the law would confine the indulgence would readily be overstepped, if self-interest, friendship, or enmity should present even slender inducement to the sacrifice of truth.

The practice of the courts established by the India Company for the administration of justice to the nations of Hindostan is regulated by local laws, enacted by the governments of the several presidencies of Calcutta, Madras, and Bombay. The courts administer oaths in the usual English form of words. The Mahomedan takes the Korán in his hand, and after repeating the oath kisses the

book, and then places it on his head. The Hindus are mostly sworn on the leaf of the sweet-basil, which is placed by a Brahmin in the hollow of the hand, with some water of the Ganges,—the leaf and water are swallowed by the swearer; but this and other modes are not of very binding effect on their conscience. Veracity is not considered essential to respectability of character; and a Hindu, in general, considers rather what evidence will best serve the cause in which he is interested, than whether what he is about to depose be true or false. Our local regulations, which provide for the administration of criminal justice, according to the Mahomedan law (subject to many important modifications), declare perjury to be punishable by exposure, by marking on the forehead of the culprit a word signifying “liar*,” by whipping, and by imprisonment, with hard labour, for not more than seven years. A native of India, particularly a Hindu, is not much disgraced by having been sentenced to punishment for perjury. If, for example, the convict were a priest of reputed sanctity, his followers would not fall off on that account.

* In Rome they branded a false accuser in the forehead with a Greek κ, the first letter of *Calumniator* or *Kalumniator*.

MEXICO.

THE following is an extract from a book in the King's Library of the British Museum, called *The pleasant History of the Conquest of the West India*, translated 1578. "In Mexico were twelve judges, who were all noble men, grave and well learned in the Mexican laws. These men lived only by the rents that properly appertain to the maintenance of justice, and in any cause judged by them, it was lawful for the parties to appeal unto twelve other judges who were of the prince's blood, and always abode in the court, and were maintained at the king's own cost and charges. The inferior judges came ordinarily once every month to consult with the higher. And in every fourscore days, came the judges of every province within the Mexican empire, to consult with the Judges of Mexico; but all doubtful causes were reserved to the king only, to pass by his order and determination. The painters served for notaries, to paint all the cases which were to be solved; but no suit passed above fourscore days without final end and determination. There were in that city twelve sergeants, whose office was to arrest, and to call parties before the judges. Their garments were painted mantels, whereby they were known afar off. The prisons were underground, moist and dark, the cause whereof was to put people in fear to

offend. If any witness were called to take an oath, the order was that he should touch the ground with one of his fingers, and then to touch his tongue with the same, which signified that he had sworn and promised to speak the truth with his tongue, taking witness thereof of the earth, which did maintain him. But some do interpret the oath, that if the party swear not true, then he might come to such extremity as to eat earth. Sometimes they name and call upon the God of the crime, whose cause the matter touched !”

CHAPTER VIII.

MODERN EUROPEAN OATHS.

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ITALY.

I GLADLY begin with Italy, because most judicious alterations have been made, and with most complete success, with regard to the administration of oaths in that country not many years ago. I cannot help recommending to the attentive consideration of my countrymen, especially of those whose voice may have an influence in promoting a calm and considerate review of our own practice, the wise regulations, together with the sensible reasons assigned for them, embodied in a small work, called *The Reformation of the Criminal Legislation of Tuscany**. The first extract is quoted only for the sake of the sound principle and right feeling recognised in the preamble: the evil which the law itself was enacted to suppress, we are happily altogether free from in this country.

“To the end that a just and more efficient restraint might be put to the custom in old times, universally prevalent with regard to oaths in criminal proceedings, and to prevent, to the utmost of our power, a repetition of it, even as *the vene-*

* Riforma della Legislazione Criminale Toscana, 1786.

ration and respect which we owe to God and his holy name require, and, at the same time, *to avoid the danger of giving occasion for false-swearing*, we enlarge the provisions of the law of 1679, by which it was forbidden to put the accused person upon his oath as to himself, but not as to others: now we absolutely forbid in future that any one who is proceeded against at law should be put on his oath, whether as regards himself or others,—whether those others be accomplices or not, in any case or circumstance whatever, even though the accused should desire to be put upon his oath to clear himself.”

I beg to remind my reader that these reformations in the legal practice of Tuscany seem to have two great objects in view, the very two which I have at heart for my own country; first, the abolition of all unnecessary oaths; and, secondly, the more solemn and reverential administration of such as may still be retained. Whoever takes an interest in the maintenance and more general dissemination of these two master-principles, will, I think, be gratified by the following paragraphs, though the enactments conveyed in them may not be needed, nor may be applicable in our own country. For, whatever be our defects, the self-accusation of suspected persons, and the self-conviction of the accused are, at all events, not among the number.

Section the seventh makes these provisions, "No prosecutor shall be compelled, as formerly, to remove all suspicion of *calumny by his oath**; since it is enough that he should be liable to the punishment of calumny†. And, whereas the depositions of witnesses examined before the trial comes on are of no use by themselves, unless they are followed up by other proceedings necessary to bring the matter into court, we enact that the witnesses shall not be put on their oath when they are examined in the first instance; but only, if after a copy of the evidence has been given to the person accused, he should desire that the witness be put on his oath, then he shall confirm his deposition by his oath‡. Without this especial request, the evidence will be

* See the Oath of Calumny, p. 23.

† By a parity of reasoning, among other oaths which would be pronounced unnecessary in different departments, in our ecclesiastical court the oath of an administrator would be dispensed with, because he enters into a bond himself, with two sureties also, under heavy penalties, to perform those very things which his oath embraces.

‡ This principle would, in our administration of justice, render unnecessary all oaths before the granting of warrants to bring the parties before a magistrate for examination; and also all oaths before commitment, except when the accused required the prosecutor or his witnesses to be sworn. And I know that, even now, oaths of the first class are dispensed with by magistrates in a large district, though it is, I fear, a deviation from the strict course of law as it now stands. I am also aware, that many would feel a strong objection to any change which would authorize arrest and detention without an oath.

received as though it were sworn to: and in all proceedings against an accused person who has run away, the evidence of witnesses, though not sworn, shall be altogether valid."

The tenth section of this reformed code, prescribes as a consequence of the preceding law, that, "instead of the warning which used to be previously given to the witness to say the truth being on his oath, the magistrate shall admonish him of the obligation, which by divine and human law every one is under, of not giving false evidence, or falsely concealing any thing; and shall dwell on the importance of such obligation. He shall also warn him that he is liable to be called upon to verify, by his oath, the evidence he is about to give."

This is a far more considerate, wise, and humane course, than what is usually adopted in our country, whether in the previous proceedings or during trial, as far, at least, as my own observation and experience enable me to pronounce. The usual course with us is for the witness to be first sworn. The first words he hears are, "Take the Book;" and the first word he utters is a declaration of his own name upon oath. He is then examined, and not a word is ever said about the solemn obligation under which he lies, till either the cross-examining barrister would force him into a change of testimony, or the judge suspects that he is stating what is false. Then he is reminded

of "the solemn oath" he has taken ; sometimes, indeed, he is cautioned on religious grounds by the judge ; but much more frequently he has a more or less gentle hint from an advocate, that there is such a thing as an indictment for perjury. But this generally comes too late ; the witness has pledged himself to the truth of an assertion, and the frail tendency of human nature will not allow him to retract. And the perjury which a solemn caution, such as the law of Tuscany prescribes, would have prevented, subsequent remonstrance, or threat, will only drive the unhappy witness to reiterate. I have myself more than once observed the good effect of a few words from the judge at first, "Now speak the truth, witness*."

This injunction of the Tuscan code reminds me of what once took place, and very probably more than once, in Westminster-Hall. It was at the trial of Edward Earl of Warwick, for the murder of Richard Coote, Esq., in the year 1699. There were many inconsistencies in our courts of law then, some of which have been since removed ; others, I fear, still remain. The earl, however, was tried by his peers who were not upon oath, but he was charged by witnesses upon oath ; whilst the witnesses whom he called for his defence were

* Perhaps such an address owes much of its effect to its being rare. If it were a constant form, perhaps it would be comparatively disregarded.

not allowed to be sworn*. The peers pronounced their judgment, each standing up in his place uncovered; and laying his right hand on his breast, each peer said, "Not guilty of murder, but guilty of manslaughter, upon my honour." When the first witness for the defence was called, the Lord High Steward thus addressed him; "Captain Keeting, you are not upon your oath, because the law will not allow it. In cases of this nature, the witnesses for the prisoner are not to be upon oath, but you are to consider that you speak in God's presence, who does require the truth should be testified in all causes before courts of judicature; and their Lordships do expect that, in what evidence you give here, you should speak with the same regard to truth as if you were upon oath."

I cannot help mentioning here a fact bearing

* It was only in the first year of the reign of Queen Anne, that it was provided by statute [1 Anne, ii. 9.] that in all cases, witnesses for the prisoner should be examined upon oath, in like manner as witnesses against him. Before the reign of Queen Mary, the prisoner was not allowed to call any witnesses for his exculpation. She gave a very humane and honourable injunction to Chief Justice Morgan, to hear whatever might be said in the defence of an accused person. But the prisoner's witnesses were still not examined upon oath, and therefore the jury gave less credit to them than to the witnesses for the prosecution, till the statute of Anne. The trial of the Earl of Warwick took place between the injunction of Mary and the statute of Anne.—See some excellent remarks of Blackstone, book iv., c. 27.

upon the point before us, communicated to me on the best authority. A solemn inquiry was lately conducted, under the Record Commission, by men of undoubted integrity, and talent, and learning, which not only affected the character of the individual concerned, but involved the forfeiture of a lucrative situation should the result of the investigation be unfavourable. The inquiry was carried on with the utmost anxiety to reach the truth, and (after, as I understood, grave deliberation,) it was conducted without the administration of a single oath. Each witness was admonished to speak with the same regard to truth, as if he were upon his oath. And the commissioners were fully satisfied that they had arrived with equal safety at the truth. But to return to the laws of Italy.

The eleventh section runs thus, “whenever either the culprit, or any other person, shall, by the direction of the magistrate, be obliged to give bail, neither the person bailed nor his bail shall take any oath. And, as well in this case, as in the case of a promise on oath (which was usually admitted instead of bail, and which we altogether abolish) the magistrate shall be satisfied with his promise under bond, &c.”

Section 12. “We enact, that whenever it be lawful to put a person on oath, for any cause whatever, the judge or the magistrate before

administering it, shall warn the persons on the obligation which an oath carries with it, dwelling on its essence and importance; and, to make a greater impression, we abolish the form of simply causing a paper to be touched*, and we order that the oath shall be given before a crucifix; and if the person do not belong to the Church of Rome, then he shall be put upon his oath, after the aforesaid warning, according to the most respected and feared rule of his religion."

In the Austrian code of Joseph the Second (1782), we find the abolition of a curious oath in some of the universities. Before that time students and graduates were compelled to declare upon oath their belief in the immaculate conception of the Virgin Mary. The law runs thus: "Whereas the importance of an oath requires that it should be given only when it can be founded on the most certain truth, and where there is necessity for it,

* To understand this, we must remember, that in most foreign countries, before the French revolution, the form of oath was to put the hand upon the Gospels. But as the book was not always at hand, and as the occasion for it was very frequent, the practice was introduced of causing the person to touch a scrap of paper instead of the Gospels, *as if it were a copy of the Gospel*. Hence, in old deeds, the formula is often to be met with, "*tactis &c., ut,*" or "*tactis &c., quasi;*" that is, "having laid his hand upon paper, as if it were a copy of the Gospels." This led to a lamentable increase of perjury. The custom is still prevalent in many parts of Italy, such as Piedmont, the Roman States, Modena, &c.

we abolish henceforth the oath, ‘De immaculata conceptione’ in all the universities and places of education, and on the conferring of academical degrees.”

By the same authority it is enacted (in 1781), that any person taking an oath, whether in orders or not, whether male or female, shall take his oath raising the thumb and the two first fingers of the right hand, and shall use no other formula than, “So help me God.”

In the criminal code which was in force in the kingdom of Italy under the government of Napoleon, the following enactment is found. “Every witness, before being examined, is put on his oath, previously to which the judge admonishes him of the importance and sacredness of the oath, and reminds him of the punishment to which false witnesses expose themselves; after which *the judge and the clerk rise, and bare-headed*, the judge causes the witness to take the oath in the following words: ‘I, A. B., swear and promise before God, the infallible judge of my conscience, and the tremendous avenger of perjury, to tell the whole I know on every question that shall be put to me. So help me God.’ And no other form or outward act shall be observed*.”

In the code for civil proceedings now in force at Parma, we find the following enactment (1820).

* Code for Criminal Proceedings, 166.

Every Catholic takes his oath kneeling, putting his right hand on the holy Gospels, and uttering the words "I swear, calling God to witness the truth of what I am going to say."—Sect. 407.

FRANCE.

IN France, the form observed is, for the president to cause the witness to lift up his hand, and say, "I swear*." One in holy orders lays his hand upon his bosom†. The princes of the blood were not formerly compelled to swear. This was settled in an appeal in 1669. Condé, who was named general legatee by the Countess de Guitault, refused to make his affirmation on oath, pleading his privilege.

Witnesses and interpreters are sworn very much as in England, only it is added to their oath, that they will act "without hatred and without fear."

* M. Merlin, Répertoire de Jurisprudence, 1827.

† I believe there is now no such distinction in France.

CHAPTER IX.

MODERN EUROPEAN OATHS (CONTINUED).

—
SPAIN.

IN the *Compendio del Derecho de España* we learn that the form of oath used in determining suits is this,—“You swear by God the Father, and by Jesus Christ his son, and by the Holy Spirit, who are three persons and one true God; and by the Holy Evangelists, and by the cross (or upon the altar), that the answers you shall make are true. And he who gives the oath shall say—So help him God, as he speaks the truth; and he who swears shall answer—Amen.”

I conceive there must be different modes of taking an oath judicially in Spain. An accurate and well-informed Spanish gentleman has assured me that the oath with which he is most familiar in their courts is,—“That the witness shall form a cross, by placing the middle of his thumb on the middle of his forefinger, and as he kisses it, say—By this cross I swear.”

There is a very curious incident, with which I have since become acquainted, and which I cannot help connecting with this form of oath in Spain. I have no other reason however for connecting the two circumstances, than the question which immediately offered

itself to my mind, Was it by tradition coming to them from some of their ancient tribes in Spain, that these "Sons of the Desert" were taught the oath by which they bound their Christian captive? The celebrated Marsigli was founder of the Institute of Bologna. His whole history is one of exceeding interest; but we must not refer to it further than the illustration of our subject requires. In the war of Belgrade he had been made prisoner by the Turks; but his name and rank remained unknown. He attempted to make his escape, but failed, and on being retaken he was condemned to death. Through the intervening night, between sentence and the time of execution, he deliberated within himself, whether he should declare who he was—a step which would secure his life, but subject him to an exorbitant ransom—or whether he should run all risks. He determined on the latter. Before the fatal hour arrived, two Arabs came, and purchased him as their slave for a sum equal to about eighteen pence of our money.

These men to bind him by the most solemn obligation, insisted upon his swearing on the faith of a Christian that he would never think of making his escape: and the oath they prescribed was, that he should make the form of a cross with his two fingers, compelling him to kiss it*.

* Vollero di più il mio giuramento sopra la religion Cristiana, facendo con due dita la croce che mi obligarono a

Before leaving our inquiry into the oaths of Spain, we must refer to their “Oath of Calumny*,” which they call “*Manquadra*,” *a perfect hand: for, as the hand has five fingers, so has this oath five articles.*

By this oath the plaintiff is to swear—

1. That he does not sue maliciously, but for his right.

2. That he will proceed in the cause truly, and without fraud or falsehood to his knowledge.

3. That he neither has given, nor will give, any thing to the judge or clerk, beyond their accustomed dues.

4. That he will put in no false proof or instrument.

5. That he will not pray for time maliciously, with a view to prolong the suit.

There is this remarkable exception made in their law to the cases of perjury:—“Kings ought to improve and not deteriorate their kingdoms; and so it will not be perjury in a king, were he to swear to do any thing to the prejudice or disparagement of his kingdom, and not fulfil his oath. So, also, a bishop, if he should swear to the great injury of his church.”

baciare per l'osservanza della promessa di mai pensare alla fuga, che eseguii con tutta fermezza d'anima per religiosamente osservarla.

* This is very much, if not precisely the same with the old oath of Calumny, now abolished in England.

OATHS IN SCOTLAND.

WE have already referred to the manner in which an oath is taken in Scotland, as being more solemn and impressive than we find the same act to be in England. The witness lifts up his hand, and *the judge himself* administers the oath to him: this last circumstance probably constitutes its greater solemnity; for I can conceive that our outward form, if observed with more reverence, and as it used to be, is at least equally impressive with the Scotch practice. This will not, indeed, be the case so long as the Crier of the Court thrusts hurriedly and unceremoniously a diminutive volume, taken from his waistcoat pocket, into the hand of the witness, and hastens it as unceremoniously to his mouth; but were the witness to lay his hand upon a Bible*, in size and character something like the Holy Book which he sees in the church, or one which he reads in his own home; and were the words of the oath uttered solemnly, and if possible by the judge himself; and were the witness then to bend down and reverently kiss the book, as it lies upon the desk before him, I conceive that our form would then be at least equally solemn with that of lifting up the hand.

* This custom of laying the hand upon a large volume containing the Holy Scriptures is still, I am informed, retained in the East India House. But I have never witnessed it.

And this, without any new legislative enactment, might be directed to be observed now by the magistrates and judges, on their own authority.

I have been favoured by the kind offices of Scotch lawyers with the following forms of oath now in use in Scotland.

Oath taken by the Jury in Criminal Trials, whether before the High Court of Justiciary or the Inferior Courts :

“ You fifteen swear by God, and as you shall answer to God at the great day of judgment, that you will the whole truth say, and no truth conceal, so far as you pass upon this assize.”

The oath in civil cases is, with a slight variation, the same.

Oath of Witnesses, whether in Civil or Criminal Causes :

“ You swear by God, and as you shall answer to God at the great day of judgment, that you will tell the truth, the whole truth, and nothing but the truth, so far as you shall know or be asked at in this cause.”

After taking the oath, the witnesses are then, in Scotch phraseology, “ purged of malice and partial counsel,” by the judge putting these questions :—

Have you any ill-will at either of the parties in this cause? (or the prisoner, in criminal trials.) Has any person instructed you what to say? or given, or promised you any thing for giving evidence?

The oath which was formerly administered to witnesses in the Commissary Court, but is now abolished, is thus described: "The witness kneels, with his right knee on a cushion, and placing his right hand upon one of the Holy Evangelists, pronounces these words after the judge,—I renounce all the blessings contained in this book, if I do not tell the truth; and may all the curses therein contained be my portion if I do not tell the truth: I swear by God, and as I shall answer to God at the day of judgment, that I will tell the truth, the whole truth, and nothing but the truth."

None but Quakers, in Scotland, refuse to take the appointed oaths*. The objections once entertained by the Anti-burghers only regarded the acknowledgment of the spiritual authority of the magistrates of burghs; and are now no more. Peers voting at elections, and persons holding offices in Scotland, are sworn in the English form of *imprecation* [so it is there called], So help me God.—But this is regarded as an English

* I conclude that if there are any Separatists in Scotland, they refuse to be sworn.

oath. In some oaths prescribed since the Union with England, an appeal to the Almighty is introduced also at the end, thus,—“I do, in the presence of God, declare and swear that ——:” and concluding,—“This is truth, as I shall answer to God.”

CHAPTER X.

PERJURY.

WHATEVER definition we adopt, or to whatever form of oath we adhere, it is most evident, that instead of the indifference and recklessness which we witness every where throughout our own country, on no occasion is gravity of behaviour, and an exactness in weighing the truth of what we say, more necessary than when we bind ourselves by an oath*. Our words ought to be few, and our hearts full of awful apprehensions of the majesty of that God in whose presence we stand, and to whom we appeal; to whom all hearts are open, from whom no secret is hid, and who will bring every work, and word, and thought, into judgment at the dreadful day of doom. Whatever be the form of the obligation by which the soul binds itself to the truth, or whatever be its definition, it must be acknowledged by all that PERJURY is a sin of

* The observations of Isodorus on the sin of attempting to deceive the person who exacts the oath from us by any words of double meaning, or any subterfuges, however skillfully devised, are well worth attention. "With whatever device of words a man swears, God who is the witness of the conscience receives the oath in the sense which the person to whom he swears attaches to it; and the swearer is guilty of a double crime, the prostitution of the name of God, and the deceiving of his neighbour.—Ivon: xii. 36.

especial malignity, implying either a denial of God's omniscience, or a belief that he has withdrawn his providence from the earth, and has no regard to the conduct of men; or at least, (if indeed it be not an expression of total indifference,) for the sake of serving some present end, or gaining some present advantage, it is a bold venturing on the justice and future vengeance of heaven. On this subject I cannot persuade myself to omit the reflections of Heineccius, extracted from the same treatise which has already supplied us with his sentiments on the origin of oaths, "But whilst we confess that this acknowledgment of fraud and wickedness, which gave birth to oaths, is degrading to our race, still it is an honest acknowledgment, and such as the truth itself seems to have compelled us to make: for the very facts prove that we cannot safely rely even upon those who are bound by an oath, much less on men unsworn; and that there are countless reasons why so frequently the faith even of an oath fails."

"In the first place, there are some, who deny that there is a God, or if there is, that he has any care for human affairs—

‘And thus they fearless every altar touch *.’

"In the next place, though it is provided by nature that whoever shall be guilty of any impiety

* Juvenal, xiii., 59.

and crime, shall feel the most bitter accuser and executioner in his own bosom, yet the habit of sinning at length brings on a kind of callous state of mind, and stifles all reasoning, and shuts it out by a sort of rash and headlong audacity, not far removed from madness. And how easily will these impious men, their conscience seared as with a hot iron, pollute their souls with a thousand perjuries, before they are affected by the very slightest sense of guilt." (The writer here describes, with much force and life, the power of conscience, and the horrors of a troubled mind. But the perjury is committed, and the injury is done.)

"There are others," he proceeds, "whom the vast and infinite mercy of God, by which they ought to be most powerfully recalled from sin, prompts to perjure themselves. It excites the strongest hope, even in men of most profligate audacity, that God will either be appeased by vows, and offerings, and prayers; or will be slow in exacting the penalty; or will be satisfied with a mild punishment. All these causes Juvenal has bound up together, as it were, in one bundle*."

No one can have paid attention to the subject of oaths, without being driven, at a very early stage of his inquiry, to draw a broad line of distinction between the moral guilt of false-swearing, and the

* Juvenal, xiii., 90. Sunt in Fortunæ, &c.

civil crime of Perjury. It is a distinction which the laws and the practice of many people would force him to make; but which seems in no country to have involved more inconsistent consequences, and to have led to greater positive practical evil than in our own. Perjury is defined, by Sir Edward Coke, to be “a crime committed when a *lawful* oath is administered in some *judicial* proceeding to a person who swears *wilfully, absolutely, and falsely*, in a matter *material* to the issue or point in question*.” The law, as Blackstone† states it, “takes no notice of any perjury, but such as is committed in some courts of justice having power to administer an oath, or before some magistrate, or proper officer invested with a similar authority in some proceedings relative to a civil suit or a criminal prosecution: for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them.” With what inconsistency does this one sentence of the learned Commentator justly charge the law of England! Oaths upon oaths, beyond number, are required, and are indispensable

* Book iv., c. 10.

† This is Blackstone's summary of Coke's “definition (or description,” for so he calls it;) the words of which are, “Perjury is a crime committed when a lawful oath is ministered by any that hath authority to any person in any judicial proceeding, who sweareth absolutely and falsely in a matter material to the issue or cause in question, by their own act, or by subornation of others.” 3 Inst: 164.

in various departments of life, and in affairs of daily recurrence, required and made indispensable *by law*, yet the breach of them is not punishable, because the law,—the very law which exacts them, “deems them unnecessary at least.” All Oaths of office are condemned in one mass by this single sentence: no breach of them can be visited as a crime by the penalty of perjury, because (to quote the reason of the Commentator) they are unnecessary. Not even the breach of any oath required by Act of Parliament, except in a judicial proceeding, involves the crime of perjury unless the statute enacts, that such oath when false shall be perjury, or shall subject the offender to the penalties of perjury*. But on this point I have already spoken under another view of the subject. At present, I have instanced these cases, only in illustration of the prevalent distinction between the crime of perjury as a “public wrong,” and the guilt of “false-swearing,” as an offence against God.

The history of Perjury, considered as a crime

* Neither a false oath in a mere private matter, nor the breach of a promissory oath, whether private or public, is punishable as perjury. And the Judges, on a case reserved, were unanimous that upon no oath taken before a surrogate for the purpose of procuring a licence, however grossly false, could perjury be assigned, though the oath is required to be taken, and the very terms of it are defined by Act of Parliament. 4 G. IV., c. 76.—See Russell, art: Perjury. See also pp. 50, 51. of this Treatise.

against the state, and therefore to be punished by the civil magistrate, is full of interest. It is however, at the same time, surrounded by many difficulties, and involved in much doubt. For that punishments have been, in various ages and countries, enacted against perjury, and have been actually inflicted, there can, I conceive, be no question: and yet, against the clear evidence of history, we repeatedly are told, not in learned dissertations only, but on the testimony of practical men, that the false-swearer and perjurer was left in former days entirely to the vengeance of the Deity, whose majesty he had insulted, and whose anger he had invoked.

CHAPTER XI.

PERJURY AMONG THE JEWS.

How far, in practice, the Jews considered the false-swearer amenable to human punishment, is a question of much uncertainty. That the law of Moses provided no specific penalty for that exact offence, merely as a breach of oath and as a substantive crime, may, I think, be reasonably maintained. In one case, indeed, involving the happiness or misery of families, an oath of purgation is prescribed, with all the impressive details of its administration,—and a punishment is threatened to be *miraculously* and *visibly* inflicted on the offender, who should be hardened enough to defy Jehovah by perjury, as she had already by adultery broken his sacred law*. But this provision (of which it is probable that the mass of expurgatory oaths which once overspread Christendom with impiety, were, in their origin, the corrupt and perverted imitation), was solitary: and, as far as it goes, instead of sanctioning the Jewish people in taking into their own hands the punishment of perjury, should seem rather to intimate, that the Almighty would reserve to himself and his own immediate act the just visitation of the guilty soul. On the legendary traditions

* Numbers v., 11, to the end.

respecting this ordeal, and its awful consequences, with which Jewish writers abound (and among the rest Josephus himself), we need not dwell. It is a subject at once which requires much delicacy in its discussion; and of which any further examination into the details would be superfluous here.

I am not aware that in the Mosaic code any specific punishment to be inflicted by the hand of man is assigned to perjury, as such and in itself, independently of other circumstances. The perjured soul exposed itself to the full vengeance of heaven, and except in those most absurd and wicked distinctions, by which in this, as in other parts of the divine law, the Jews would "make the word of God of none effect by their traditions," the fear of the penalty of perjury at the hand of heaven seems to have taken fast hold upon their minds. But when I venture to say, that no punishment appears to have been awarded against perjury, *as such, and as in itself a substantive crime* I am aware of the exemplary penalty assigned to *false accusation*. The law is written in Deuteronomy xix. 19: "If a false witness rise up against any man, to testify against him THAT WHICH IS WRONG, then both the men between whom the controversy is, shall stand before the Lord, before the priests, and the judges which shall be in those days; and the judges shall make diligent inquisition, and behold if the witness be a false witness, and hath testified falsely against

his brother, then shall ye do unto him, as he had thought to have done unto his brother." Now we need not here stay, to examine whether in this passage the expression *that which is wrong*, implies the falsehood of the testimony of the accuser, or the nature of the offence imputed to the defendant. Though, perhaps, the most correct interpretation is, that those words actually imply "the guilt of apostasy," *as the crime with which the innocent defendant is charged*. The word in the Hebrew, סרה, means, *a falling away, or a turning aside*, the very same word which is used a few chapters only before, where there can be no doubt of its meaning. (Deut. xiii. 5.) "And that prophet, or that dreamer of dreams shall be put to death, because he hath spoken to TURN YOU AWAY from the Lord your God." But be this as it may, I think it is quite clear that not the guilt of perjury, but the malicious offence of false accusation is here provided against. Had it been perjury, it would have required the penalty, in the case of false-witness in behalf of another, or in the case of property in dispute, to be inflicted just as certainly as in the case here specified. But that is not so. A similar remark will apply to some enactments in the ancient Roman code.

"The Mosaic Law," (I quote the words of a celebrated writer,) "prohibits perjury most peremptorily, as a heinous sin against God, but still

leaves to God himself the punishment of the offence, without ordaining any punishment to be inflicted by the temporal magistrate.

“ This view of God being the sole, but the infallible avenger of false-swearing, is an awful view of perjury, but it is a philosophically just one ; and in this view did the Israelites actually regard it—a sin which stained the soul, but no crime for which they were responsible to their fellow-creatures*.”

While contemplating the state of things when a whole people regarded with abhorrence false-swearing, as a sin which stains the soul, but saw in it no crime for which they were responsible to their fellow-creatures, can we avoid contrasting it with the frightful state of things among us now ? A living witness (a gentleman of high legal station and character whose duties give him ample room for induction,) has lately assured me that experience, has compelled him† to infer, that in the large majority of cases, the fear of the temporal conse-

* I had written the above opinion, before the dissertation of Michaëlis fell into my hands. It gives me great satisfaction to find my views in this point confirmed by such high authority, though I am compelled, at the same time, to acknowledge the surprise with which I found him so inaccurate in some of his facts, and so imprudent in some of his opinions.—Michaëlis, Art. 256.

† This opinion may probably be considered as too strong and sweeping. And certainly it must be confessed that the

quences of perjury detected, is the only feeling which operates upon men, in their estimate of an oath. It is a painful and melancholy reflection. But let us not stop short at our regrets, without putting this question,—Has not the unprecedented *frequency of oaths in our country*, and the lamentable absence of religious solemnity in their administration, led to this sad result?

very evasions by which some witnesses, as I have elsewhere observed, attempt to deceive their own consciences, if they can avoid kissing the book, with other similar kinds of subterfuge, show that even these infatuated persons, however criminal in the eye of God, attach some sanctity to an oath, if accompanied with the solemnity which they thus endeavour to evade.

CHAPTER XII.

PERJURY IN GREECE.

How far perjury was considered as a civil offence, to be punished by the magistrate, in the earliest ages of Greece, I have not been able satisfactorily to ascertain. Potter, indeed, says that “they were in some places punished with death,—in others, with the same punishment which was due to the crime with which they charged any innocent person,—in others, only by a pecuniary mulct*.” But he cites no authority†. The orator Lycurgus seems to imply that it was an acknowledged principle among the Athenians, that they were, in behalf of the Gods, to take vengeance themselves on a perjurer. “Justly would you punish him [the perjurer,] both in behalf of yourselves and in behalf of the gods‡.” And many proofs are found among the orators, that various punishments were actually inflicted by the civil magistrate, according to law. Thus Antipho, remonstrating against the absurdity of receiving the testimony of a servant

* Antiq. c. vi.

† There is a passage in Andocides which cites a law imposing the penalty of death on one who fails of convicting the man whom he accused of a capital offence; but this, as in the case of the Jewish law is the punishment not of perjury, but of false-accusation.—Andocides, *De Mysteriis*, 20.

‡ Lyc. v. Leoc: 78.

in preference to that of a free citizen, urges that a free citizen, in case he be convicted of giving untrue evidence, subjects himself to the penalty of infamy and fine*. And in the speech which Demosthenes made when prosecuting two men on the charge of perjury, he points out, in the prologue, the heavy punishment inflicted by the state on a citizen convicted of that crime, and the encouragement held out by the law to prosecutors†.

But whatever might have been, in earlier or later days, the temporal punishment assigned to perjury in any of the States of Greece, it is, I think, very evident, that a deep and lively sense of the moral and religious guilt of false-swearing was practically prevalent through its different districts, and for many ages. Their poets, whom we may suppose to be fair interpreters of the general sentiments either of those who had gone before them, or of their own contemporaries, abound with clear testimonies to this point. They employed the popular traditions of their country in the composition of their poems, and became, in turn, the instructors of their own people, and of succeeding ages; and undoubtedly, miserably deficient as were these masters—blind leaders of the blind,—compared with the teachers of righteousness enlightened by the bright beams of the Gospel, yet every lover of virtue and inte-

* Antiphon. Tetralog., A. 120.

† Demosth. v. Evergum et Mnesibulum.

grity, and of piety too, must feel grateful to God for the help once afforded by these heathen teachers, in humanizing the nations of the world. Even now, not for pleasure only, and grateful reminiscences, but for solid instruction and improvement, we are often induced to dwell on sentiments, and principles, and arguments, and descriptions, which will last, whilst literature has a place on earth, living monuments of the vast and diversified powers of the human mind on all subjects BUT ONE; and on that ONE,—the most important, the most momentous subject of all—the same monuments will last, a standing irrefragable evidence that the utmost stretch of human intellect never could reach the knowledge for which human nature is ever thirsting; in other words, that ETERNAL TRUTH IS TO BE FOUND ONLY IN THE GOSPEL.

On the subject before us, the poets of antiquity are by no means silent, and their words, though mingled with words of fable, are loud and clear. “On the fifth day, they tell,” (says Hesiod) “the Furies rove and roam around, avenging ‘the Oath,’ to which Strife gave birth*—the bane of those who swear falsely†.” When Homer would represent

* Hesiod, ἩΜΕΡΑΙ, 40.

† It is curious to remark how frequently the sentiment is repeated by Greek writers, that the oaths of lovers go for nothing. “He swore indeed, but, as they say, oaths made in love never enter the ears of the Gods.”—Stobæus, xxviii. So Plato, *In Symposio*.

Agamemnon as binding his soul by the most solemn oath to the truth of what he said, the poet's expressions are pregnant with most forcible and awful thoughts of the danger to which perjury exposes the soul of the false-swearer, independently of any human punishment.

“ Know, now, first Jove, of gods the highest and the mightiest, and Earth, and Sun ! the Furies, too, who, beneath the earth, punish the man whoever has sworn to a falsehood ! and if any part of this oath is false, then may the gods send to me afflictions very many, as many as they do send to him whoever sins against them by perjury*.”

Thus, too, in the solemn oath of the same hero, he calls to witness, among others, “ *those two deities* who punish, among the *dead in the realms below*, the soul of that mortal whoever had been guilty of perjury†.”

Probably a critical examination into these and other like passages would lead us to infer (as far as the representations of poets would justify any inference), that an awful visitation of Providence was believed, in those ages, to be the inevitable consequence of perjury, *both* in this world *and also* after death shall have closed the present scene.

The classical scholar would scarcely forgive me, were I to omit the testimony borne to the religious

* Iliad, xix. 258.

† Iliad, iii. 278.

opinions of the men of Greece, on this point, by an incident recorded by the historian of their earliest days. In those primitive times, the orator depended more upon the force of an example or historical narrative, than upon the direct effect of argument; and in recounting the circumstances of an example, they indulged far more in detail than would now be tolerated: except, indeed, when an orator of extraordinary graphic powers should dwell on a point of unusual interest to his audience. The Spartan king, Leotychides, when urging upon the Athenians their moral obligation to release certain hostages, employs no other arguments; he relates, at some length, the story of one Glaucus, a Spartan, of great reputation for integrity, but who was tempted to withhold a large sum of money deposited in his hands by a rich Ionian, who had since died, and whose sons came to Sparta to claim their property of Glaucus. The man's conscience was not easy after he had put off the young men, telling them to return at the end of four months; and he would fain have the sanction of the oracle at Delphi to his meditated fraud. The sacred response was any thing rather than what he had hoped to hear.

Glaucus, thou son of Epicydes, for the present, doubtless,
it is profitable

To gain your cause by an oath, and possess the money
for your prize:

Swear, since death equally awaits the man who keeps his oath religiously.

But Swearing has a nameless child ;—he has no feet,—He has no hands,—but he pursues swiftly, till he seizes And destroys the whole family, and the entire house ; But the family of him who religiously observes his oath prospers in future days *.

Glaucus, on hearing this stern rebuke, implored the Deity to pardon his rash words. The sentence of the oracle well deserves the best consideration of men who live in the clear light of the Gospel. “*To tempt the Deity is the same with doing the act†.*” “Of Glaucus, (continued Leotychides,) no one descendant is there, no one branch is left to be called by his name, but, root and branch, he is swept away from Sparta.”

We cannot wonder at this being one of the most celebrated traditions of antiquity ; nor can I refrain from adding the testimony borne to the prevalence of the same belief by the orator Lycurgus :—“Men of Athens, this too you ought to learn,—an oath is the bond which keeps the democracy together. The commonwealth consists of three parts, the archon, the judge, and the individual citizen ; and every one of these binds himself by the same pledge of faith, and rightly too ; for with regard to their fellow-men, many have often defrauded and deceived them, and

* See also Juvenal, xiii. 199. His reflections upon this event are remarkably striking,

† Herod: Erato, 86.

have not only escaped from all present danger, but have never been called to account for their deeds of injustice; but from the Gods no one can conceal himself by perjury, nor can he ever escape their vengeance; on the contrary, even should it not be in his own person, yet, at all events, the children, and the whole race of the perjured man, fall into great misfortunes*.” Such were the sentiments which long prevailed in Greece; but, unhappily for that ill-fated country, another and a new philosophy found its way thither, which laughed at such sentiments as the offspring of superstition, and which led to the establishment of principles and of habits, as disgraceful as they were pernicious†. And in this point of reverence, or contempt for an oath, we see the result of these principles as described by an eye-witness‡.

Such a melancholy state of degeneracy from their early integrity and religious regard for the awful sanction of an oath might have been anticipated, in a country where the stage was suffered to sap the foundation of all moral and religious principle, by that most fatal of all weapons, ridicule; and that evil demon ruled in Athens. Honesty and religion were laughed out of countenance in that city, and

* Lyc: v., Leoc: 80.

† Diagoras denied that there were Gods, because the perjurer was allowed to go unpunished.—Selden II., 11.

‡ Polybius. See Part II. of this work, ch. iv.

left it to its fate. With regard to the particular point of the traditional religious belief in the divine vengeance attendant upon perjury, we have a fair specimen in repeated instances, of the too-successful efforts of that engine, ridicule, to undermine the very corner-stone of society, and by extirpating religious fear, to burst asunder the bands which held together their commonwealth. “Whence is the thunder-bolt?” (an old man is made to ask Socrates, whose venerable name is given to an infidel philosopher of the new light.) “Evidently Jupiter hurls this at the perjured.”—“How, you old fool and dotard (is the Atheist’s reply); if he strike the perjured, why has he not burnt up Simon, and Cleonymus, and Theorus? They are desperate perjurers. Instead of this, he strikes his own temple, and the promontory of Sunium, and the lofty oaks. In return for what injury shown to him?—An oak cannot take a false oath!” The old man is confounded by the question. “I do not know how to explain that,” he says, “but you seem to be right*.” At the same time, the advantage here, as ever, taken by the enemies of truth, of an unsound argument used in the cause of truth, ought to teach us Christians a lesson. Those enemies too often easily persuade men that all is false, if what they have hitherto relied upon is shown to be untenable. An unsound

* Aristoph. Nubes, 394.

argument may, for a time, have, with the bulk of mankind, more powerful influence than one whose foundation is sure. It may be regarded as a pious fraud to employ it, but in the end it will prove deceitful; in the day of trial, it will always be found in the ranks of the adversary.

CHAPTER XIII.

PERJURY IN ROME.

IN examining the question, whether Perjury was considered in Rome as an offence against the state to be visited by the civil magistrate, we are met on the threshold by a broad assertion of Michaëlis, which deserves notice.—“In those honourable times,” he says, referring to the early days of the commonwealth, “the Romans had no punishment for perjury, except that of the Censor marking the perjured person as a bad man,” referring us, in a note, for his proof, to Aulus Gellius, *Noctes Atticæ*, lib. vii., c. 18; but his proof is very far from bearing out his assertion. A. Gellius there only relates a mere matter of fact, with regard to those men who had attempted to evade their oath after the battle of Cannæ. It is a well-known story. Hannibal had sent them to negotiate an exchange of prisoners, under an oath to return if the Senate would not accede to his terms; and one, or more of them, on leaving his camp, returned immediately under pretence of having left something behind, and, persuading themselves that they had fulfilled the letter of their engagement, after the failure of their embassy at Rome, did not return. Now Aulus Gellius says of these men,

“so base was this fraudulent casuistry deemed, that they were every where held in contempt, and, as to their character, torn in pieces; and the Censors AFTERWARDS visited them with all the *penalties* and *disgraces* of every brand, because they had not performed their oath.” And adds, that Cornelius Nepos says, so intolerable was their punishment, that they could endure life no longer, and committed suicide. It has struck me as possible, that Michaëlis, in a cursory glance at this passage, mistook the word *afterwards* as though it implied that subsequently to this transaction, in which the custom originated, the Censors usually marked a perjurer as a bad man. Be this as it may, he had surely forgotten what the Censors’ brand for perjury implied; it not merely affected the character; its punishment was of a much more palpable and tangible kind; it involved degradation in rank, and the loss of every privilege of a Roman citizen,—a total disfranchisement. And of these individual offenders Livy tells us expressly, “that they were cited by the Censors,—that those among them who had a public horse assigned to them, were deprived of it; that they were degraded from their tribe, and all disfranchised*.”

Another passage of Michaëlis I confess much surprised me, considering his reputation for accuracy, learning, and deep research. “The ancient

* L. xxi. 18.

Romans left it to their gods to avenge the perjurer's wickedness; and, however much in after-times, the fear of the gods, and the principles of honesty, disappeared at Rome, still we find this rational maxim of their ancestors subsisting in the reign of Alexander Severus, 'It is enough for the guilt of perjury to have the Deity its avenger.'" How this could be regarded as a *maxim of their ancestors* it is difficult to understand, when the testimony of Livy, in the very passage which Michaëlis quotes, refers to an early age of their republic; and when Aulus Gellius himself sends us back to a still more remote date for a more severe punishment, lamenting the increase of the crime of perjury as a consequence of the mitigated penalty which, in his days, visited the offence. "Think ye, friend Favorinus," are his remarkable words, "if that punishment for false witness, which was enacted by the Twelve Tables*, had not been abolished; and if *now, as in past times*, whoever was convicted of false witness were thrown down from the Tarpeian Rock, so many would not be ready to testify falsely as we now see†?" But this is not the only mistake

* See a curious oversight of our celebrated commentator with regard to the Laws of the Twelve Tables, at the close of the next chapter.

† It has been said, that this *might* refer to *false accusation* (as among the Jews, Deut. xix. 19), but I see nothing in Aulus Gellius to countenance that supposition. His words are "De falsis testimoniis"—"qui falsum testimonium dixisse convictus esset."—Book xx., c. 1.

into which Michaëlis must have been betrayed, before he could have written such a sentence. He represents the sentiment,—“it is enough for the guilt of perjury to have the Deity its avenger,” as a legal maxim prevalent at Rome in the time of Alexander Severus. He is by no means justified in this assertion. The facts are these; Antoninus Caracalla and Severus had enacted, “if any one should swear by the Genius of the Prince, that he ought not to pay the demand of the plaintiff, and should swear falsely; or if he undertook, upon oath, to pay within a certain time, and did not pay, he should be scourged and dismissed, whilst these words, in Greek, should be pronounced over him, “Swear not rashly*.” Now all that Alexander Severus enacts, with regard to this specific law, is, “that no one should be in danger of bodily pains or penalties, nor be deemed guilty of treason, should he rashly, in a passion, or in a heat, have sworn falsely, though it were even by the name of the Prince†.” We know from various sources of evidence, that it was considered far less dangerous in Rome, to swear falsely by any of the Deities worshipped there than by the Genius of the Emperor. Had a false oath been taken deliberately in the time of Alexander Severus, there is no colour for the assertion, that it would have been

* Digest xii., 2, 13.

† Cod: iv., tit. 2.

passed over by the civil magistrate, and referred to the gods as avengers of their own dignity.

It must not, on the other hand, be forgotten, that expressions occur, which seem to militate against this conclusion; but I have not met with any, which do not admit of a satisfactory explanation. For example; when his accuser laid to the charge of Rubius, a Roman knight, that “he had violated the name of Augustus by perjury,” (evidently making the gravamen of the offence to consist in the perjury having been incurred *in the name of the deified emperor*;) on this charge Tiberius observes,—“The oath must be considered in no other light than it would have been had the accused called Jupiter to witness a falsehood; adding, that the injuries of the gods were for the gods to look to*.”

Undoubtedly, then, in the earlier ages of Rome, perjury was punishable by the civil magistrate, as an offence against the state†. And the same system

* Tac. Annal., i. 73.

† From a passage in Plautus (*Rudens*, Act v. sc. 3), it has been conjectured, that in ancient times, the duty of punishing for perjury was imposed on the Pontifex Maximus. Gronovius denies this, and interprets the passage as referring only to the custom of the two litigant parties placing a deposit in the hand of the Pontifex, who when the suit was ended, returned to the winning party his deposit, and confiscated that of the loser. The note in the Delphin Edition (the authority for which I am not acquainted with), says plainly, that such as were guilty of perjury, if they had

seems to have prevailed throughout. Calvin (of Heidelberg), after examining the various opinions on this point, comes to the conclusion that perjury was always punished in Rome, but not always in the same manner. A false witness, in a civil action, was liable both to an indictment for perjury, and also to an action for damages, at the suit of the party aggrieved*. And the degree of punishment was left very much to the discretion of the judge. Generally speaking, perjury was punished at Rome either by exile, or transportation to an island, or disfranchisement as a citizen†.

But, however the temporal punishment of perjury varied at Rome, it is melancholy to reflect on the rapid degeneracy of the Roman people from the pre-eminent station they once maintained among the nations of the world for their honour and good faith, and the religious reverence in which the obligation of an oath was once held among them, to the lowest grade of corrupt principles, and flagitious practice, in those same points of duty. To the distinguished place which they once held

sworn by the Gods and the altars of the Gods, were punished by the Pontifex; if they had sworn by the prince, were punished by the prince; if by any other oath, they were punished by the censors. Selden thinks that perjury was seldom punished as such in early ages. B. ii, 11.

* C. lib. iv., xx., 13.

† De curia submoventur. Pauli Sententiarum, lib. v., tit. 15.

among the nations of the world in this respect, Polybius bears most striking and ample testimony, as we have already seen; whilst their miserably degraded and fallen character is painfully forced upon our notice by their historians as well as their poets. Livy, when recording the attempt of the tribunes to insnare the people into such an interpretation of the oath which they had sworn to Cincinnatus, as would involve the guilt of equivocation and subterfuge, accounts for the failure of the attempt, by observing, "that the neglect of the gods which prevailed in his age had not, in those earlier days, reached Rome; nor did every one then, by their subtle interpretation of an oath, make it and the laws bend to their purpose; but, on the contrary, all shaped their own moral conduct by their oath and the laws*;" whilst Juvenal, (every fair deduction being made from his representation, as an overcharged, highly-coloured statement of the vices and crimes which he had undertaken to lash with the utmost severity of his severe pen,) still places the moral and religious condition of his contemporaries in so revolting a light, that we would gladly turn our eyes from them. But perhaps our duty requires us to look steadfastly at the object, and trace the evil to its origin; and then inquire, whether similar causes have not been in operation among us; whether they are not still working the

* Liv. iii., 20.

same melancholy results ; and whether we have any control over them, to arrest their progress, and diminish the mischief they may be causing.

Before leaving this brief review of the subject of perjury, as far as relates to the parts of the ancient world with which we are best enabled to become acquainted, I cannot help referring to the testimony borne by Xenophon to a similar progress of degeneracy in Persia. After painting in bright colours the high sense of honour, and the most religious observance of an oath which characterized that nation in the time of Cyrus, and which induced all people, without any suspicion or fear, to trust their property and their persons to them, upon the mere pledge of their oath, that writer laments that in his day no one could place any confidence at all in them. The rulers set the example of injustice and perjury, and the people were not long in following it ; for, as Xenophon justly observes, *such as the rulers of a country are, such, in general, will also be the people.*

CHAPTER XIV.

PERJURY (CONTINUED).

GERMANY.

THE laws of ancient Germany, must ever supply an interesting subject of inquiry to us Englishmen, inasmuch as many of our institutions may easily be traced to them as their origin. It is, I believe, often difficult to ascertain precisely, what was the ancient law, and what was introduced by Charlemagne, or other monarchs, by positive enactment. In many cases, the old law was incorporated in the new enactment, with more or less of modification and change. Still there is much recorded of the ancient unwritten law of various states. On the subject of perjury, the following particulars are, as I believe, gleaned from the best authorities.

In the earliest times, a witness who injured a party by false-swearing, was punished by such damages as were an equivalent to the injury sustained. If the offender was not able to pay, he became the slave of the party whom he had wronged*. In either case, he was never afterwards

* Heineccius, *Elementa Juris Germanici*, lib: ii., tit. 27.

allowed to enter a court of justice as a witness. And the suborner of perjury in such a case, was condemned to a hundred lashes, *to have his head shaven** (decalvari), and to be branded.

The law of the Visigoths, provided that perjury should be visited by confiscation of goods, amputation of the hand, by “the shaven head,” and scourging.

By the law of the ancient Burgundians, whoever were the witnesses of one who consented to the wager of battle, should he fall, they as well as any other person who was proved to have instigated them, were fined each three hundred shillings, lest the crime of many offenders might be supposed expiable by the death of one; and their guilt of perjury was considered as proved by the death of the friend whose cause they had sworn to be just.

By the Salic law, a perjured man was only subject to a fine of fifteen shillings; and the prosecutor on an unfounded charge of perjury was visited by the same fine.

In the majority of the States north of the Rhine, a distinction prevailed between false-swearing knowingly, and false-swearing ignorantly. In the former case, it was a capital offence; in the latter,

* This punishment of having the head shorn was by no means confined to perjury. Immediately after a culprit was condemned to the galleys, he suffered this indignity. It continued to be a mark of infamy in Italy, I believe, till the French invasion at the end of the last century.

the juror was to lose his hand or redeem it. Probably, the punishment, in the latter case, was for carelessness in so solemn an act: otherwise, we can scarcely see the reasonableness of any punishment whatever.

In one state Louis the Pious enacted, that when two witnesses on oath contradicted each other*, they should both fight it out with shield and club; that the vanquished should lose his hand, and that the partners in his crime should be compelled to redeem theirs. The credit of a witness was thus made to depend upon his strength and skill in single fight.

The ancient law of Germany was, perhaps, strictly speaking, that the perjurer should lose his thumb. This was changed by Charlemagne (to whom the German law-writers ascribe the attribute of Divine vengeance, calling his enactments the offspring of the Nemesis Carolina) into the loss of the two fingers, because, after the introduction of Christianity, the juror either lifted up his two fingers, or laid them on the Gospels†.

* Heinec: 317.

† By various councils and decrees of the Church in former days, enactments of punishments and penances of various kinds have been made against perjury, the good effects of some of which may well be doubted. In one Council it was enacted, that any Clerk convicted of perjury should be debarred from the communion for two years. In another, that whoever should entice a man to commit perjury, should be sentenced to excommunication for life; whilst the per-

FRANCE.

PERJURY, by the Capitularia of Charlemagne and Louis le Debonnaire, was punished by the loss of the hand. By the 'Ordonnance' of St. Louis (1254), the benefit of appeal is taken from one convicted of that crime. Other laws condemned the convict to fines, compensation to the party wronged, to infamy, and incapacity for any office. At present, the punishment is left to the discretion of the judge, and is to be apportioned to the character and circumstances of the case*.

AUSTRIA†.

"THE punishment of perjury is imprisonment for five, or more, to ten years, and exposure in the

jurer himself was made incapable of bearing witness thereafter, and was to be branded with infamy according to law. We find in one law these extraordinary distinctions; whoever perjures himself by the hand of the bishop, or by a consecrated cross, shall do penance for three years; but if on a cross not consecrated, for one year. If a man under compulsion for the saving of his life, or on any other necessity perjure himself, because he loved his body more than his soul, let him do penance through three Lents; (others say, through three years,) and through one on bread and water.—Ivon: xi. 18.

* *Répertoire de Jurisprudence*, par M. Merlin, 1827.

† For much valuable information on the punishments inflicted for the crime of perjury in different continental countries, I am indebted to the obliging assistance of a very learned lawyer, well versed in foreign law. The passages between inverted commas in this chapter, are extracts from his notes.

pillory. In cases where the false oath has been productive of great injury, imprisonment for twenty years, or even for life.

BAVARIA.

“FOUR to eight years’ hard labour, incapacity to hold any public office, and to give testimony for the future; and exposure in the place appointed for the punishment of criminals. Perjury in a criminal cause is punished with greater severity.

PRUSSIA.

“DEPRIVATION of all public offices, public denouncement as a perjured person. One to three years’ imprisonment. Forfeiture of four times the amount of the advantage sought by the false oath. Perjury in criminal cases may be punished even with death.

SAXONY.

“THE punishment of whipping, or amputation of the two fore-fingers with banishment, is obsolete. The present punishment is exposure on a scaffold—hard labour for two or more years; fine, with imprisonment according to circumstances. In criminal cases it is more severe.

HANOVER.

“ACCORDING to a project for a new criminal code, published in 1826, the punishment for perjury was

to be incapacity to hold any public office, or to give testimony—and confinement in the house of correction; in criminal causes affecting the life of the accused, it was to be more severe.

HOLLAND.

“WHIPPING, imprisonment, banishment, &c., according to circumstances. The old law punished perjury by branding the face, or cutting off the joints of the fore-finger.

RUSSIA.

“ACCORDING to the project for a criminal code, approved by a late Imperial Commission, the punishment of perjury was to be imprisonment for not more than five years, nor less than three months—a fine for persons of condition; the knout for the common people. According to another project, branding in the back, exposure on a scaffold, the inscription of the perjurer's name on a gallows, announcement of his crime in the newspapers—imprisonment from two to six months, and incapacity to give testimony. Both projects would enact severer punishments in criminal cases.

HUNGARY.

“INFAMY. Inability to sue in his own name. Incapacity to give evidence. Forfeiture of some other civil rights. The law which obliged per-

jurers to go bare-headed, and bare-footed, and to wear a particular sort of dress is obsolete.

HOLSTEIN.

“INCAPACITY to give evidence, or hold place—to make compensation for the injury sustained by their perjury, and hard labour.

SCHLESWIG.

“Loss of rank and honour, inability to give testimony. Compensation to party injured. Amputation of the fingers seems to be disused.”

SPAIN.

THERE seems to be much doubt as to the precise punishments appointed for perjury by the law of Spain. One writer contradicts another: but what punishment may be prescribed by the law is in practice of little moment; for, as a general rule, none is put into execution; a reason, says Professor Palacios, why false witnesses are to be found to prove whatever may be desired. However, I believe those books are most worthy of credit which tell us that, in civil cases, the perjured person is liable to be punished by condemnation of twelve years to the galleys, and by the loss of his teeth; and he must make restitution to the person injured by his perjury: and, in criminal matters, whatever corporal punishment had been inflicted on a person

convicted on false testimony, the same is to be visited on the false witness. In other cases the punishment is public disgrace and perpetual condemnation to the galleys. In the case of a Decisive Oath, required by the judge or the other party, no punishment can be imposed on the false-swearer beyond what God himself will inflict*.

ENGLAND.

PERJURY is punishable in England, as well in the ecclesiastical as in the temporal courts: but the proceedings are almost universally confined in this case to the latter. Excommunication, however, is recognised in the statute of Elizabeth†, as a punishment to be visited on one who has been guilty of perjury in the ecclesiastical court. Before the Conquest, perjury among us was punished by corporal chastisement, banishment, by cutting out the tongue‡, loss of the hand, denial of Christian burial, forfeiture of goods, and sometimes death§. Indeed, so deeply impressed were our forefathers with the guilt of perjury, and so convinced that the punishment of the false-swearer would be severe in the extreme, that we find such a strong expression

* See Johnston's Civil Law of Spain, book ii., tit. 20.

† 5 Elizabeth, c. 23.

‡ The punishment of cutting out the tongue for perjury, prevailed in very early times.—Seld: II., 11.

§ 3 Inst., c. 74.

as this inserted among the words of a statute,—
“Once forsworn, and ever forlorn*.”

Juries who returned a false verdict lost their rights of freedom as citizens; were never allowed to give evidence; forfeited their goods and chattels to the king; their lands and tenements were seized by the king, or rendered desolate; their wives and children were amerced; and their persons committed to prison. Sir Edward Coke† apologizes for dwelling on the punishment of perjury, alleging as the reason for his doing so, that “some persons had given out that perjury was not punished by the ancient laws of England, wherein there would have been a great defect, and an encouragement to ill-disposed men, if jurors should, by the common law, have been punished for perjury, and witnesses, which are great motives to them of giving their verdict, should be perjured and not be punished.” Afterwards, the king’s council used to punish the offence at their discretion. Unlawful oaths are mentioned as one reason for the institution of the court of star-chamber‡, and prosecutions in that court for perjury were very frequent. On its abolition§, all matters examinable there, were declared remediable by common law. The punishment now, by common law, is fine and

* 18 Edw. III., 53.—Coke, Inst. ii., 236.

† Coke, Inst. III., 6, and II., 268.

‡ 3 Henry VII., c. 1.

§ 16 Charles I., c. 10.

imprisonment, and never more to be capable of bearing testimony. The statute of Elizabeth inflicts the penalty of perpetual infamy, and a fine of forty pounds on the suborner,—and in default of payment, to stand with both ears nailed to the pillory. Perjury itself is thereby punished with six months' imprisonment, perpetual infamy, and a fine of twenty pounds, or to have both ears nailed to the pillory. But the prosecution is generally carried on at common law, aided by the statute 2 George II. c. 25, which superadds a power for the court to commit the convict to the house of correction for a term not exceeding seven years, or to be transported for the same period*.

Blackstone alludes to a regret on the part of some persons, that the perjury by which the life of another has or might have been destroyed, was not a capital offence in England, as it was in France†. The judge himself enlarges somewhat upon the argument used by Montesquieu, to show, that the law as it is, in both countries, when taken together with all the circumstances, is right. The great difference was, that in the English courts witnesses were examined for the accused as well as for the prosecution, and here the rack is not used to extort confession‡. But in

* Blackstone, book iv., c. 10.

† Montesquieu, *Esprit des Loix*, book xxix., c. 11.

‡ Montesquieu observes, in a note, that by the old French law, witnesses were examined for the accused, as well as

pursuing this subject, Blackstone has fallen into a curious error, which one might scarcely have expected to find in so classical and so accurate a man. "Perjury seems," he says, "to be already very properly punished by our law, which has adopted the opinion of Cicero, *derived from the Law of the Twelve Tables*, 'The Divine punishment of perjury is perdition; the human punishment is disgrace*.'" Such, undoubtedly, is the sentiment of Cicero, as expressed in his brief summary of the laws by which he would govern a commonwealth; but, instead of that opinion being derived from the Twelve Tables, on the contrary, capital punishment—the very penalty which he represents as foreign to the spirit of the English law, and to the sentiment of Cicero—is the only punishment of the crime of perjury prescribed by those Twelve Tables. Cicero indeed says, that in giving the principles of his laws he should employ the words and phrases which, though obsolete, are best suited to express their meaning, as he would wish to convey it; such words, *for example, as may be found in the laws of the Twelve Tables*, which Blackstone, looking only cursorily over the passage, might have mistaken for an intimation

for the prosecution (as they are in England.) Consequently, by the institutions of St. Louis [lib. i., c. 7] there was only a pecuniary punishment against false witness.—Montesq, xxix. 11.

* Cic: de Leg: II., 9.

that he would give a summary of those laws. Cicero's laws probably were, for the most part, such as had been in operation at Rome, though he himself implies that others were not so, but only agreeable to the spirit of the ancient constitution and the habits of the people.

AMERICA.

THE punishment on conviction for perjury committed in any cause depending in any of the courts of the United States, or in any deposition taken in pursuance of the laws of the United States, is imprisonment not above three years, and fine not exceeding eight hundred dollars, pillory one hour, and the disqualification for being a witness until the judgment is reversed*.

INDIA.

AMONG the Hindus the temporal punishment of perjury is fine or banishment, or both, by the laws of Menu. And as to the future visitation on false-swearing, they are assured that "a witness who knowingly says any thing before an assembly of good men different from what he has seen or heard, shall fall headlong after death into a region of horror, and be debarred from heaven. Whatever

* Encyc. Americ., art. PERJURY.

places of torture have been prepared for the slayer of a man, for the murderer of a woman or of a child, for the injurer of a friend, or for an ungrateful man,—those places are ordained for a witness who gives false evidence.

The judge is to declare to the witnesses, the penalties which will be incurred in a future state (after transmigration) by the false-swearer; and the happiness that will accrue to him who testifies the truth. The temporal punishments which the Hindu law ordains, are fines which may be imposed on the four classes; banishment, which may be adjudged to all but Brahmins; mutilation of limb, which also may not be inflicted on Brahmins; the fine is to be apportioned to the motive which actuated the perjury. If he speak falsely through covetousness, he shall be fined 1000 paras; if through distraction of mind, 250; if through terror, two mean amercements; if through friendship, four times the lowest; if through lust, ten times the lowest amercement; if through wrath, three times the next, or middlemost; if through ignorance, 200 complete; if through inattention, 100 only!

Let a just prince banish men of the three lower classes if they give false evidence, having first levied the fine; but a Brahmin let him only banish.—Menu, c. viii., v. 123.

Provision is made, however, for pious falsehood,

which is called “the Speech of the Gods;” and it is allowable to give false evidence for the purpose of saving a life which would be forfeited to the rigour of the law. The “venial sin” of “benevolent falsehood” is to be expiated by oblations.

END OF PART II.

PART III.

SECTION A.

ORIGIN OF OATHS. HEINECCIUS.

AFTER enumerating the various machinations, by which, instead of consulting each other's welfare, men were ever attempting to injure their fellow creatures in person, or property, or reputation, Heineccius proceeds, "In this state of affairs, it was essentially necessary to devise some means by which a rein might be put on the perfidy of men, to check its career; and with this view, almost all nations, as if by agreement, have betaken themselves to the religious obligation of an oath; in order that those whom reason itself, and the divine law imprinted on the minds of all would fail of influencing, might yet be deterred from deceit, by reverential awe of the Supreme Being, who fills the universe with his presence, and penetrates into the inmost recesses of the heart; who, moreover, has power to execute his own will in all things, and whose will it is, as his justice requires, to visit with eternal punishment every breach of good faith, and contempt of his name. Hence the Egyptians, as Diodorus Siculus testifies, called an oath, "The

greatest pledge of faith among men," and Philo, "The most sure symbol of good faith." The Roman ambassadors, too, in Procopius, speak of it as "Of all, the last and firmest basis of mutual faith and truth." For no one can be persuaded, that any faith may safely be placed in him, whom not even reverence for the Deity, and certain danger of the Divine vengeance, could deter from falsehood. There is, consequently, no department of life, neither public nor private, neither in forensic nor domestic affairs, in which the use of oaths is not most frequent; but no where more frequent than in the courts of law and trials. For whenever the judge cannot be directed in his decision by the evidence of witnesses, or documents, or other lawful proofs, the litigant parties either at the requisition of their opponents, or by the direction of the judge, throw themselves on an oath*, as a kind of sacred

* It may not, perhaps, be altogether superfluous, to remind the English reader, that in the books of the foreign jurists, as well as of ancient Greek and Roman authors, the oaths spoken of are generally those by which the plaintiff or defendant in a suit, either at the desire of his antagonist, or by the direction of the judge, pledges himself to the justice of his cause, or confesses or denies some material point. To a person not aware of this circumstance, much of what appears in the law-books of other ages and countries must either be unintelligible, or is likely to mislead. In our common law courts such an oath has no place; and far be it from me to suggest an addition to the number of oaths already sanctioned in our halls of justice. Still, many of our best lawyers are of opinion that in civil causes an examination of the

sheet anchor. It is thus, that St. Paul calls an oath, "The end of the whole dispute*." This use of oaths (as the most short and compendious method of settling a controversy), not only did the Jews, and Greeks, and Romans, and other nations somewhat advanced in civilization, adopt, but also the ancient Germans, who, as we are told†, were otherwise accustomed to settle their disputes not by law, but by arms. All these points, I think, prove that no means for terminating quarrels have appeared more certain and expeditious than an OATH; and for this reason, because men thought that no one would be so reckless of eternal blessedness, by a longing after which we are all influenced, as rather to provoke by solemn stated words the vengeance of God, the most strict Judge, upon himself, than speak the truth."

"Still, however, the reflections which Seneca‡ gravely makes on the other cautions usually adopted by men in forming contracts, namely, that it is a confession of fraud and wickedness, disgraceful to

parties themselves in open court would, in a large majority of cases, forward materially the real substantial ends of justice.

* Hebrews, vi. 16. This description of St. Paul does not apply to our courts of law: it is only applicable where the custom prevails (alluded to in the previous note) of the judge, or either of the parties, cutting short the controversy by the oath of the other party.

† Velleius Paterculus, lib. ii., c. 118.

‡ Sen. de Benef., iii. 15.

the human race, the same we think applies, in all the fulness of truth, to *oaths*. If all were possessed of that self-restraint and regard for what is just and honest which men ought to feel, surely we should never compel any one to swear, but should place as much reliance on him when merely making a serious affirmation, as though he laid his hand upon the altar and swore by all that was sacred. The case is as Æschylus represents it, “It is not the oath which invests the man with credit, but the man the oath.” But now when we will not believe a man of tried honesty, unless he pledge his oath, nay, when we even thus can scarcely think sufficient caution taken, unless we have other and strong corroborations of the oath, what else do we than acknowledge, voluntarily, the perfidy of man, and profess, not without imposing a stain of ignominy on our race, that man cannot, in any wise, be safely trusted by man*.”

* Heineccius de Lubricitate Jurisjurandi Suppletorii.

SECTION B.

SEPARATISTS.

IN the last Session of Parliament an Act was passed for the relief of persons called Separatists, a very small body * according to their own account. Though I carefully perused their petition, and the papers which had been circulated on their behalf, some of their reasonings I could not understand. But of this I am quite certain, that the title and preamble of the Act of Parliament are both perfectly inconsistent with the enactment. Its title is “An Act to enable Separatists to make a solemn affirmation or declaration instead of an oath;” and the preamble states, that the Separatists refuse, from religious scruples, to *take an oath* in a Court of Justice, and the body of the law enacts, that they shall in all cases where an oath is required, be allowed to make their solemn affirmation or declaration in these words, “I, A. B., do, *in the presence of Almighty God*, solemnly, sincerely, and truly *affirm and declare*,” &c. Now this affirmation is, to all intents and purposes, an

* Mr. Walker, who tells us that two or three individuals constitute a Church, reports that they have in Scotland only six Churches, in Ireland fourteen, and in England only three.

oath ; it is the form of oath chiefly recognised by the Fathers of the Christian Church : and it is the form which, (as the reader may have already observed,) could the change be made with safety, I should gladly see adopted in England, instead of the form now used. At the same time I must consider it as much an act “binding the soul” as our present form, though that is the point upon which Mr. Walker of Camden Town, who seems to be the organ of the Separatists, chiefly dwells, as compelling him to refuse to take the usual oath in our Courts of Justice—“because,” as he says, “it is *binding the soul*, that is, presumptuously pledging that which is not his own, and over which he has no dominion.” Does not every one, who makes any declaration to another, give that pledge? Is not the soul always under a pledge to speak the truth? Is not God the avenger of falsehood, as well as of false-swearing? “I would distinctly add (says Mr. Walker) that I should have no scruple to answer, on any suitable occasion, thus, as our Saviour was adjured to speak the truth. But I fancy that the lawyers would not consider me as therefore answering upon oath.” On this last question I cannot speak ; but of this I am most clear, that should a witness in our Courts of Justice give his evidence after hearing from the Judge this solemn adjuration, “I adjure you by the living God to speak the truth,” it would be as essentially

an oath, and the witness in answering would as really “bind his soul” as if he had pledged himself to the truth in the usual way.

This oath, now prescribed to be taken by the Separatists, is the same with the form by which, a century ago, the Moravians were allowed to swear, excepting that the words “solemnly, sincerely, and truly” are inserted, and the words “the witness of what I say” are omitted; an omission, as I think, very *unwisely* made—the true purport of an oath being, to remind the person who takes it that God *is the* witness of what he says. The Act is this:

Anno Tertio et Quarto.

GULIELMI IV. REGIS.

CAP. LXXXII.

An Act to enable the people called Separatists to make a solemn affirmation and declaration instead of an oath.
[28th August, 1833.]

WHEREAS there are in various places in Ireland, and in some parts of England, and elsewhere, certain dissenters from the United Church of England and Ireland, and from the Church of Scotland, commonly called Separatists, the members of which class or sect of dissenters, from conscientious scruples, refuse to take an oath in courts of justice and other places, and in consequence thereof are exposed to great losses and inconveniences in their trades and concerns, and are subject to fines and to imprisonment for contempt of court, and the community at large are deprived of the benefit of their testimony: and whereas it is therefore expedient that the said sect called Separatists should be relieved in the manner hereinafter mentioned; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the

Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every person for the time being belonging to the said

Separatists, instead of an oath, may make the following affirmation.

sect called Separatists, who shall be required upon any lawful occasion to take an oath in any case where by law an oath is or may be required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in these words following, videlicet:

I, A. B., do in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also in the same solemn manner affirm and declare ———

Such affirmation shall have the effect of an oath.

Which said solemn affirmation or declaration shall be adjudged and taken, and is hereby enacted and declared to be of the same force and effect, to all intents and purposes, in all courts of justice and other places whatsoever, where by law an oath is or may be required, as if such Separatists had taken an oath in the usual form.

Persons making a false affirmation, to be subject to the same punishment as for wilful perjury.

II. And be it further enacted, that if any person making such solemn affirmation or declaration shall in fact not be one of the people commonly called separatists, or shall wilfully, falsely, and corruptly affirm or declare any other matter or thing which if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties and forfeitures as by the laws and statutes of this kingdom are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

SECTION C.

DEFINITIONS OF AN OATH.

1. DEFINITIONS NOT IMPLYING THE IMPRECATORY FORM.

WE shall find many definitions of an oath which imply nothing of direct imprecation, both among Christian and Heathen writers. Cicero calls it “an affirmation under the sanction of religion*.” Gregory of Nazianzen defines it to be “a solemn affirmation of the truth, as in the presence of God†.” The author of Fleta seems to have embraced in his view, those corrupt modes of swearing by other attestations than by a direct appeal to God himself, which disgraced Christendom too long, and, unhappily, have not yet ceased to be its shame;—“an oath is an affirmation, or negation on some point, confirmed by the attestation of a holy thing‡.” This corresponds very closely with the authorized definition at the present time in Spain, “An oath is an attestation, or affirmation, on any subject, by the name of God, and some sacred thing. And no one ought to swear by heaven or earth, nor by any

* Cic. de Off. iii. 29.

† Greg. Naz. In defin. Juram. Dom. Exod. xxii. 11. See Sanderson.

‡ Fleta, lib. v. 22.

creature;—by nought except what is holy and sacred*.” Dr. Sanderson, in his Lectures before the University of Oxford, professing to supply its full definition, says, “an oath is a religious act, in which, to establish a point in doubt, God is invoked as a witness†.” Dr. Johnson describes an oath to be “an affirmation, negation, or promise, corroborated by the attestation of the Supreme Being.”

Voet, in his notes on the Pandects, defines it to be “a religious affirmation of the truth, or an invocation of the name of God in witness of the truth:” and our celebrated Coke defines it thus; “An oath is an affirmation or denial by any Christian of any thing lawful and honest before one or more that hath lawful authority for advancement of truth and right, calling upon God to witness that his testimony is true.”—3 Inst. 74.

2. DEFINITIONS OF AN OATH IMPLYING AN IMPRECATION.

OTHER definitions there are, which imply the clause of imprecation or curse; thus, in the Pandects, an oath is defined to be “a religious asseveration by the invocation of God as an avenger, if the juror, knowingly, should deceive‡.”

* Perez, Compendio del Derecho Publico y Commun de España, 1784.

† De Jur. Prom. Oblig. Prælec. 1. 1710.

‡ Pandect. xii. 2.

Agreeably to which, Puffendorf defines an oath to be “a religious asseveration, by which we either renounce the mercy, or imprecate the vengeance of Heaven, if we speak not the truth.” Lord Chancellor Hardwicke, in the preliminary proceedings in the case of Omychund and Barker, said, “What is universally understood by an oath is, that the person who takes it, imprecates the vengeance of God upon him if the oath he takes is false.” In giving judgment however, the same learned person speaks very differently, “All that is necessary to an oath is an appeal to the Supreme Being, as thinking him the rewarder of truth and the avenger of falsehood.” In the same cause Sir Dudley Rider, then Attorney General said, “All that in point of nature and reason is necessary to qualify a person for swearing is the belief of a God, and an imprecation of the Divine Being upon him, if he swears falsely*.”

M. Merlin describes it as being “as well a promise, the sincerity of which is guaranteed by the invocation of the name of God, as also the affirmation of a fact, for the truth of which God is taken as witness.” Michaëlis, to whose chapter on oaths and perjury we cannot refer without mingled sentiments of approval and dissatisfaction, appears to go to the full length of regarding it in all cases, as “a solemn

* Atkyns's Rep. vol. i., s. 20 and 48.

call to God to punish us, both here and hereafter, through all eternity, if we tell a falsehood, or do not keep our promise*.” Bishop Burnet, who writes very satisfactorily on the subject, thus instructs us; —“ An oath is an appeal to God, either upon a testimony that is given, or a promise that is made, confirming the truth of the one and the fidelity of the other. It is an appeal to God, who knows all things, and will judge all men ; so it is an act that acknowledges both his omniscience and his being the Governor of this world, who will judge all at the last day according to their deeds, and who must be supposed to have a more immediate regard to acts in which men made him a party†.” We have already seen that our own form, “ So help me God,” is at once very classical and very heathenish‡. The definition of an oath most nearly corresponding with the imprecation really implied in that form, is one quoted by Brissonius. “ The nature of an oath involves our saying, ‘ may the Deity so far favour me as that is true which I affirm§.’ ”

* Mich. on the Laws of Moses, 256.

† Burnet, Art. 39.

‡ Part ii. c. iv.

§ Asconius Pædianus apud Briss.

SECTION D.

OUR LORD'S OATH BEFORE THE HIGH PRIEST.

I HAVE alleged our Saviour's example when adjured by the High-Priest as decisive, establishing beyond further dispute the lawfulness of an oath to Christians. The interpretation of the passage in the Gospel (St. Matt. xxvi. 63), which I have deemed the only sound interpretation, represents our Lord as having taken a judicial oath before the constituted authorities of his country. A doubt has been suggested on the correctness of that interpretation. The other arguments brought forward would, I think, independently of this, satisfactorily establish the legality of an oath. But this argument, if it be sound and unassailable itself, is so entirely conclusive, admitting of no appeal, that I felt anxious to put my reader in possession of the nature of the evidence, and the result of my inquiries, which, I confess, have left no doubt whatever in my own mind on the subject.

The question, and I believe the only question is this; did the High Priest, when he addressed our Saviour, actually administer an oath to him, agreeably to the laws and customs of the Jews? Or did he merely call upon him (urging the strongest

motive to compliance even his reverence for the living God), to make an answer aye or no, to his question. This is, I believe, the only alternative.

The Greek word ἐξορκίζω, which our translation renders by the word of Latin origin, 'I adjure thee,' and which I have considered in the text as equivalent to the English expression "*I call upon thee to declare* UPON OATH," does not occur in any other passage of the New Testament. With a view of fixing its meaning in this passage on the most satisfactory grounds, I have endeavoured First, to ascertain the sense in which it was employed, 1, by classical authors; 2, in the Septuagint version; 3, by Josephus. And then Secondly, to collect the views which divines, as well of our own as of other churches, have taken of its true intent and meaning in this passage of the Gospel.

I. The simple word ὀρκίζω, (the word generally used in the Septuagint) is employed by Demosthenes (pro corona 235) to signify the *administration of an oath*; and the same word is used precisely in the same sense by the Septuagint (Gen. l. 5 and 7), as their interpretation of the Hebrew word, which our translators have correctly rendered *to make to swear*: "My father made me swear," Ὁ πατήρ μου, ὤρκισέ με. "According as he made thee swear," καθάπερ ὤρκισέ σε. But that same Hebrew word שבע is translated in another

passage (Gen. xxiv. 3.) by St. Matthew's compound ἐξορκίζω. This compound word is also employed by Demosthenes precisely in the same sense. I quote a passage in which the ceremony employed in administering the oath is also recorded (Coron. 1265) πρὸς τὸν βωμὸν ἄγοντες καὶ ἐξορκίζοντες, bringing each to the altar, and *making him swear*. Our translation renders the above passage in Genesis by the same words, "*I will make thee swear* by the God of Heaven, and the God of the Earth." The parallelism of the two passages in the Septuagint and St. Matthew is very striking.

Sept. ἐξορκίζω σε Κύριον τὸν Θεὸν τοῦ οὐρανοῦ
καὶ τὸν Θεὸν τῆς γῆς.

Matt. ἐξορκίζω σε κατὰ τοῦ Θεοῦ τοῦ ζῶντος.

To remove, however, any such objection against the reality of a strict parallel between these two instances, as might arise from a change in the termination of each sentence, I must observe that in the Septuagint the accusative case without any preposition and the genitive case with the preposition κατὰ, are used after the verb ὀρκίζω, *in the same sense indiscriminately*; or rather I would say, that the latter form (the form adopted by St. Matthew,) is much the more frequent of the two. Thus (1 Kings ii. 42 and 43,) "Did I not make thee swear by the Lord? Why hast thou

then not kept the OATH of the Lord?" Οὐχὶ ὥρκισά σε κατὰ τοῦ Κυρίου; καὶ τί ὅτι οὐκ ἐφύλαξας τὸν ὅρκον Κυρίου, see also 2 Chron. xxxvi. 13. In each of these instances too the Hebrew verb שבע is the same as in Gen. xxiv. 3, which, as we have seen, is rendered in the Septuagint by the verb ἐξορκίζω.

Josephus also employs the word precisely in the same sense. Thus (Antiq. ii. 8.) speaking of the oath by which Joseph bound his brethren to carry his bones to Canaan, he says, Οὕτως γὰρ αὐτοὺς ὁ Ἰώσηπος ἐξώρκισε, for thus had Joseph made them swear, rendered in the Latin "*sacramento adstrinxerat.*" And we know that it was not merely by a solemn injunction, but by a direct oath that Joseph bound his brethren: Exodus xiii. 19. "For he had straitly sworn the children of Israel" ὅρκῳ γὰρ ὥρκισε. השבע השביע: he had sworn them by an oath*.

Polybius, who lived somewhat more than a century before the Christian æra, uses the word exactly in the same signification,—when he describes the military oath of the Roman soldiers ἐξορκίζουσιν. Ἡμην κ.τ.λ. οἱ δὲ λοιποὶ ὁμνύουσιν†.

Thus, I conceive, we have satisfactorily established that at the time when St. Matthew's Gospel was written, the word employed in this passage to convey the meaning of the Hebrew word used by

* See also Joseph: ix. c. 7.

† Polyb: vi. 21.

the High Priest (probably the same word which Abraham, and Joseph, and Solomon are recorded to have used in the passages above quoted,) was the precise word in use to signify *the administering of an OATH*.

In pursuing the second branch of our inquiry, we shall find almost all writers assigning to the word in question, the exact sense in this passage of St. Matthew, in which I am maintaining that it must be received. Schleusner, indeed, would have us regard that sense as confined exclusively to the word when employed by classical writers; a view which the Septuagint version of Gen. xxiv. 3, compels us to abandon. And Grotius also, whose words he quotes, explains the verb as “*gravi obtestatione per nomen Divinum religionem alicujus animo injicere.*” “By a solemn appeal in the name of God, to throw a religious obligation on the mind:” excluding any necessary notion of an oath. Very few of the ancient Christian writers have directed their attention to this point, having fixed it rather on the malice of the High-Priest, or “the good confession” of Christ. At all events, I have not found one, who takes a view of the passage different from our own. Hilary’s words are very clear, “The High-Priest, ignorant of the very law in which he gloried, sought *even by an oath*, proof whether he were the Christ—as though the law and the prophets had spoken obscurely con-

cerning him." (Canon xxxii.) Luther does not touch upon the point at all. Calvin's words are virtually the same with those of Hilary "Caiaphas by *the administration of an oath*, examines the matter just as though he were ready to believe on the discovery of the truth."

Among our English divines, many have expressed themselves clearly on this point. We must select only two or three.

Dr. Whitby, in his Comment on Matthew v. 33. (the whole of which will well repay a careful examination) explains very clearly the nature of the oath taken by Christ. "Our Lord does not here condemn judicial oaths imposed by magistrates and superiors in matters testimonial; for it is observable, that in judicial oaths, the custom which obtained among the Jews was this, not for the person who came under the obligation of an oath, to pronounce the words of swearing with his own mouth; but an oath was exacted of him by the magistrate, and he became obliged to *answer upon oath* by hearing the voice of adjuration, or swearing from his mouth." Again he argues, "if Christ had forbidden all judicial oaths, he should not have answered when *adjured* by the High Priest to tell whether he was the Son of God, because he ought not so far to have countenanced the [on that supposition] sinful action, wherefore, by breaking of his former silence, and taking the

adjuration on himself, he showed that he did not conceive it sinful to answer upon oath before a magistrate."

Bishop Burnet's words are equally explicit (Art. xxxix.) "Thus the High-Priest put our Saviour under the oath of cursing, when he required him to tell, whether he were the Christ or not. Upon which our Saviour was, according to that law, *upon his oath*. And though he had continued silent till then, as long as it was free to him to speak or not; yet then he was bound to speak, and did speak, and owned himself to be what he truly was."

Dr. Doddridge thus paraphrases the High-Priest's words; "Think not that such evasions will suffice; Thou knowest I have a way of coming at the certain truth, and therefore, I adjure thee in the most solemn manner, by the name and authority of the living God, whose High-Priest I am, and to whom he hath committed the power of *administering this oath*, that thou tell us directly in plain terms, whether thou be the Messiah, the Son of our blessed God, or not?"

Archbishop Tillotson (Serm. xxii), after citing those passages in which St. Paul "upon weighty occasions does several times in his Epistles call God to witness for the truth of what he says, which is the very formality of an oath," proceeds, "But I go further, and shall urge an example beyond all

exception. Our Saviour who surely would not be the first example of breaking his own laws, did not refuse to *answer upon oath*, being called thereto at his trial. The High-Priest said to him, 'I adjure thee by the living God,' that is, he required him to answer the *question upon oath*." The archbishop then proceeds in nearly the same words with Dr. Whitby, and thus concludes, "so that unless we will interpret our Saviour's doctrine contrary to his own practice, we cannot understand him to forbid all oaths, and consequently, they are not unlawful."

I had written this Section, without any expectation or hope of being able to offer more than conjecture, on what seemed to me the only link wanting to complete the entire chain of our argument, the conjecture which I have offered above, namely, the identity of the Hebrew word used in the Old Testament, to signify beyond all doubt, the administering of an oath,—with the word employed in after-ages in a Jewish Court of Justice, in the sense which we assign to St. Matthew's word, ἐξορκίζω. I have since had the satisfaction of discovering this link. The very form of their oath is preserved; and the word of adjuration is precisely the same. The form is

recorded as the *form of administering the oath according to law* :—

משביע	אני	עליכם
adjuro.	ego	Vos

And Selden, in whose learned work* I first found this form of judicial oath quoted, asserts without expressing any doubt on the subject, that when Caiaphas addressed our blessed Lord in the words rendered by St. Matthew ἐξορκίζω, &c. he used the *received forensic form of administering a judicial oath*†.

* Selden, ii. 11.

† I would by no means be understood to say, that there are no instances of the same Hebrew word being employed in the sense affixed by Schleusner to ἐξορκίζω, in the passage of St. Matthew which we are examining. But I have met with a great variety of instances in which the word is used to signify, beyond all doubt, the administration of an oath. Among others I would specify the following: “Si quis pater dixerit ‘Stuprasti et decepisti filiam meam,’ dixerit autem alter ‘Nec stupravi, nec decepi;’ tumque ille dixerit ‘Adjuro te’ [משביעך אני] et hic responderit ‘Amen,’ reus est.”—See *Leges Mischnicarum. Tract: de Jura:* c. iv.

SECTION E.

ANCIENT DIVISION OF OATHS*.

I AM fully aware, that in many points, the ancient divisions of oaths, and their distinguishing characteristics, are inapplicable to the present practice in our courts of common law. Our trials in one point of view are conducted upon a principle at variance with the practice of ancient Greece and Rome, or of those countries in which the civil code was adopted. With us, the plaintiff and defendant must make out their case by documents and witnesses, without being allowed to give their own testimony. Much of the civil code is employed in providing rules for the various cases, in which the point at issue shall be settled by the oaths of the litigant parties themselves. The present inquiry, however, may be thought to require some brief reference to the distinction of oaths formerly adopted. In some of our courts, there seems to be still a very near approximation to the ancient practice, where the affidavits of the parties are admitted or required

* We are told that the Latin word, "Juramentum," is not used by any good author before the fourth century; the passages in Seneca and Ulpianus, where it occurs, are deemed spurious.—See *Vocabularium Utriusque Juris*. Naples, 1760.

during the progress of the suit, or where debts are sworn to by the creditors. Indeed, whilst we cannot exactly apply any ancient division of oaths to our own courts, yet in some department or other of our jurisprudence we shall, perhaps, find an example of almost every kind of oath admitted, though some, doubtless, with great and reprehensible irregularity.

Oaths have been usually divided into two classes—Promissory and Declaratory.

Promissory oaths are intended to secure either the faithful performance of the duties of an office, or the full execution of some contract or undertaking.

Declaratory or assertory oaths are used for the purpose of establishing the certainty of a present or past fact. These declaratory* oaths are generally distinguished under two heads,—judicial and extrajudicial. The Jews were careful to make this distinction, but with a very questionable anxiety, seeking only another cloak for falsehood.

Judicial oaths are those which are sworn in the progress of a cause, and are either voluntary or necessary.

Extrajudicial oaths are such as are sworn out of

* The Greek and Roman writers adopted different divisions of oaths, and the Roman jurists differ also from each other. I have adopted that arrangement which seemed to recommend itself most by its simplicity and general prevalence.

court, for the settling of a dispute, and are binding only upon the conscience of the parties, the civil magistrate taking no cognizance of them.

Voluntary judicial oaths* are those, by which either party in the suit decided the matter, by swearing to the justice of his claim at the desire of the other. Necessary oaths are such as the judge called upon either party to swear, for his own satisfaction, before he formed his judgment.

Of promissory oaths we have, as most persons think, far too numerous a body adopted in England. All oaths of office are promissory oaths, and, as we have seen, the law of England will not suffer a breach of them to be prosecuted as perjury†: whilst experience loudly and plainly tells us, that, in the generality of instances, they have very little influence on the conduct of the sworn party. As far as any more faithful discharge of the duties of an office may be supposed to be secured by them, it is much, I think, to be feared, that the reasoning of Augustus Cæsar, when he refused to allow the senate to swear, as they voluntarily offered to do, to observe all the laws which he should think it right to make, is too generally applicable, “Without the oath they will obey whatever laws they cordially decree, and a thousand oaths will not secure their obedience against their will‡.”

* Some writers called extrajudicial oaths voluntary.

† Coke, iii., c. 74.

‡ Dio. liv. 10.

The voluntary judicial oath was called by the Roman jurists “The oath decisory,” because there could be no dispute on that point afterwards. If A proposes that B shall swear to the truth of his claim, and B swears, judgment is given forthwith for B*. If B refused to swear himself, but is willing to decide the cause by the oath of A, he had a right to call upon A to swear†. If A swore, judgment was given for him; if not, it was given for B. If B would neither swear himself, nor refer the oath back to A, as a general rule, he lost his suit. Sometimes the party who called upon the other to swear, would be satisfied with his bare word, though he was willing to accept the challenge‡. This was always regarded as an act of great courtesy. In many cases, however, the party first challenged might refuse to allow the cause to be decided by the oath of the litigants, and refer it to independent testimony§.

The *necessary* oath was not always decisive. It

* This was Jusjurandum deferre.

† This was Jusjurandum referre.

‡ This was Jusjurandum remittere.

§ These general rules, of this kind of trial, are condensed by Ulpianus into these few words, “Cum res in jusjurandum demissa sit judex jurantem absolvit, referentem audit, et si actor juret condemnat reum; nolentem jurare reum si solvat absolvit, non solventem condemnat; ex relatione non jurante actore absolvit reum.”—Digest. xii. 2.

It was considered, in any person, a mark of baseness, and a confession of wrong, to refuse either to swear himself, or to abide by the oath of his antagonist.

was also often called suppletory, when there was a *half-full proof** before the court. These suppletory oaths were not allowed either when there was no independent evidence, or when the evidence was clear, direct, and satisfactory†.

An ancient oath, (Professor Calvin of Heidelberg regrets much that it has fallen into desuetude in modern days,) was the *oath of calumny*, an oath recognised in all the books of ancient law. The party abjured all unworthy motives in bringing the suit, swore he would have recourse to no vexatious delay, nor harass his adversary by vexatious interrogatories, &c.

By the constant practice of the civil courts, a mode of questioning upon oath prevailed, called “Positions,” which, as we are told, led to endless perjury. One of the litigant parties examined the other, with a view of eliciting some admission favourable to the examiner’s own cause. The other was only bound to answer by “I believe,” or, “I believe not.” The frequency of false-swearing, sheltered under this salvo, caused the whole system to be abolished, at least in some countries‡. I have thought that the origin might be traced in the form

* *Semiplena probatio*.

† These suppletory oaths were never allowed in well-conducted courts, when the question could be decided by documentary evidence, or ocular testimony.—Heineccius, iii. 214.

‡ Van Espen, *Jus Eccles.* p. iii., t. vii.

of a witness's oath in ancient Rome, the mildness and considerateness of which seems to have excited great admiration in Cicero*. Witnesses were only to swear, even if they testified to a matter of fact which they had seen with their own eyes, "That they *thought* so;" and the judges, when giving sentence on oath, only said "It *appears* to us." Cicero is employing this practice of his own courts, merely in illustration of an abstract point of metaphysical discussion; our own experience, I believe, would lead us to suspect the honesty of a witness who would always shelter himself under the cautious terms of "I think," "To the best of my belief," "I am not quite certain."

Heineccius tells us that the civil division of oaths into necessary and voluntary, was unknown in ancient Germany. Every oath taken was a necessary oath, administered by the judge at his discretion, either to the prosecutor or the defendant; generally to the latter. It was, consequently, in criminal cases, an oath of purgation†. The fact is, that in ancient times, the culprit was sworn to criminate himself; till by a council of Lateran, in the time of Benedict XIII., this proceeding was abolished. But the lawyers, refining upon that prohibition, drew a distinction between the culprit's swearing against himself, and his testifying against

* Acad. Quæst. iv. 47.

† Heineccius, iii. c. 214.

others, even his associates and partners in the crime with which he stood charged; and the spirit of Benedict's prohibition was thus entirely defeated. The practice of giving this collateral examination to the accused was then forbidden altogether, in some states.

Puffendorf, having stated the two principal ends to which oaths may be and commonly are applied, to be either to strengthen a promise by such a solemn act of religion, or to open the way to clearing some fact which is at present doubtful and cannot be conveniently made out any other way, adds, "and this division of oaths into promissory and assertatory may comprehend them all with regard to the two ends or uses now mentioned*."

I am not aware of any division of oaths formally adopted by our English writers; and probably the above simple division of Puffendorf may be regarded as enough for our purpose. Some of our oaths however embrace both his branches. In the oath against Simony, for example, the first clause is retrospective and assertatory, the last is prospective and promissory.

* Puffend: iv. 2.

SECTION F.

OATHS OF COMPURGATORS.

OF the oaths which most frequently occur in European history, one class, objected to from time to time very solemnly, even during their general prevalence, and now no longer allowed by law*, were the oaths of purgation. When an individual was charged with a crime, either already committed, or alleged to be intended and meditated by him, he was often compelled to clear himself from the accusation upon oath†.

One of the earliest instances of this in the christian church, which I have found given in detail, is quoted by L. A. Muratori, in his *Antiquities of Italy through the Middle Ages*‡. In the year 404, a disciple of St. Augustin was accused by a priest

* Many magistrates however, even in the present day, sanction a practice very similar in its nature and tendency.

† We cannot but regret to find the existence of such an oath, in former days, even in Protestant England. It was called the Oath ex officio, and was much abused in the reign of Queen Elizabeth by the Commission of Inquiry appointed by her. Persons were bound by that oath to answer all questions, and were often compelled to accuse themselves, or their most intimate friend.—*Eliz.* 1584.

‡ Muratori, *Antiq. Ital. Med. Æv.* Vol. iii., Dissert. 38.

named Boniface, and charged his accuser with the crime. In this state of doubt and scandal, Augustin bound them both to go to some place of extraordinary sanctity, where the more than usually terrible judgments of God would lay open the guilty conscience of any one, and would compel them, either by punishment or fear, to confess. “The sanctity of the place,” (such are the words of Augustin*,) “is known to very many,—where the body of St. Felix of Nola is entombed,—whither I was desirous that they should go, because whatever was there supernaturally discovered might be recorded with greater ease and fidelity: for we have ourselves known, at the shrines of Saints at Milan (when the devils made confession in a most wonderful and terrible manner), that a certain thief who had come for the purpose of deceiving by a false oath, was compelled to acknowledge the theft, and make restitution.” Not all places dedicated to the saint’s memory had the gift or privilege of thus detecting falsehood. The observations of Augustin, in which piety and superstition are so intimately combined, will be read with interest;—“God, indeed, is to be worshipped every where, and he must be worshipped in spirit and in truth. Still, in things made visible to mortals, who can see clearly through his counsel, why in some places these miracles should be done,

* August., Epist. 78.

in others not? Is not Africa, also, full of the bodies of holy martyrs?—and yet no where there do we know of such things being done. For, as what the apostle says, all saints have not the gift of healing, nor have all the discerning of spirits, so neither is it the will of Him who divideth to every one severally as he will, that these things should be done at* all shrines of the saints.” Thus, too, Gregory the Great declares that he had found no fault in a Bishop named Leo, but adds, “that nothing might seem to be omitted, or any doubt remain in our breast, over and above what was necessary, I compelled him to take the most solemn oaths at the most holy body of the blessed Peter; which done, we rejoiced exceedingly that his innocence evidently displayed itself by this test†.”

But a man's own oath was frequently deemed an inadequate guarantee of the truth, and the accuser required him to confirm it by the oaths of joint-purifiers, called Compurgators and Conjurators. The oath was called a greater or a lesser oath, with reference to the number of persons sworn. Generally, persons of the same rank and profession, even of the same sex, were required to be compurgators. Thus, in the laws of Hoel the Good, Prince of Wales, it is enacted that a female, whose reputa-

* *Apud omnes memorias sanctorum.*

† *Gregor., Epist. ii., 33.*

tion is impeached, shall clear herself by the oaths of seven women, for the first time a stain is attempted to be fixed upon her character; of fourteen, on the second charge; and, should a third charge be brought with any show of certainty, the oaths of fifty women were necessary, before her fair fame could be restored even in the eye of the law; how far such a process reinstated her in the private opinions of her neighbours may be a very different question.

The Bishop of Ely was once required, on the summons of the Archbishop of York, to swear himself, and to support his own oath by the oaths of a hundred priests, that he had not willed or planned the capture of the said archbishop. There is an instance upon record, of the oaths of three hundred compurgators being required*.

The usual manner of swearing was for the compurgators to lay their hands upon the pyx, or the case in which the consecrated wafer or the relics were kept, and the accused placing his hand upon theirs, said, "So help me God, or, these relics, as I am innocent."

* Or rather with ninety-nine compurgators in the one case, and two hundred and ninety-nine in the other; the oath of the principal always reckoning as one. Thus "*jurare duodecima manu*," means that eleven compurgators swore with the principal in the cause.—See Du Cange, Gloss: Juram.

These compurgators were not called upon to testify to any fact, but merely that they believed the oath of the accused in declaring himself innocent. This was little if any thing more, in a moral point of view, than calling witnesses to character in our present courts of justice; though then justice was satisfied with their mere oath, and the accused was acquitted; at present, oaths to character weigh only as probabilities against the culprit's guilt in cases admitting of some doubt, or in mitigation of punishment when discretion is left to the judge. Those compurgators were just as easy to be procured then, as testimonials to character, and to an individual's qualifications to any office, are now, and were worth about as much. It is quite startling to find with what a total absence of scruple, numbers are found to testify to the character of a person, of whom they know little more than his name. A paper is circulated, and "it is only to put your name;" a refusal to sign is regarded as a very unkind act, and as somewhat of disrespect towards those who patronize the candidate for one's signature. The same observation is too generally applicable in the case of the more solemn attestation to character in a court of justice. It is surprising to see with what facility persons are brought forward to swear that they would not believe such a witness in the cause upon oath. The admission of such testimony against character is, I believe, much

discountenanced by the judges; and, whether for or against character, it offers a strong temptation to perjury.

But these compurgators were not always, as we have already seen, free from personal danger, should they have embarked in a losing cause. By the law of Burgundy, whoever were the witnesses of one who fell when tried by the wager of battle were fined, lest, as the law states, the crime of many offenders might be supposed expiable by the death of one.

This system of requiring the oath of the principal to be confirmed by his friends, or followers, pervaded many of the transactions, both of public and of private life*. Thus, after the Emperor, Henry the Fifth, and Pope Pascal had interchanged oaths, the Pope pledging himself not to anathematize Henry, and Henry binding himself to give a safe conduct to the Pope and his party, fifteen cardinals, and other dignitaries and earls, swear in confirmation of the Pope's oath, and eleven bishops and earls bind themselves by that of the Emperor†. This covenant was confirmed by their participation of the sacrifice of the mass. The Pope received the consecrated elements first himself, and subsequently (after giving the sacrament to the

* Heineccius, Elem. Jur. Germ. cccxiv.

† William of Malmesbury, v.

ministers of the altar,) he administered it to the Emperor in these words:—"This body of the Lord, which holy church preserves, born of the Virgin Mary, and raised upon the cross for the redemption of mankind, we give to thee, dearest son, for the remission of thy sins, and for the preservation of the peace to be confirmed, and of true friendship between me and thee, and the kingdom and the priesthood."

A practice very analogous to the form then observed by Pope Pascal is still retained in some Protestant collegiate bodies, before the election of their superior. A doubt may be fairly entertained whether the circumstance of that solemn appeal to Heaven has practically the effect intended, by securing a better election. I can, however, entertain no doubt, that the feelings of uncertainty, of disappointment, or of exultation, or rivalry, or anger, which must sometimes be attendants upon such an election, and which a very advanced state of Christian feeling and spirit is required to banish altogether from the breast at those times, mark out the hour of a contested election as the time least fitted for an attendance at the Communion of the Lord of Peace and Love. Some, I know, are men of such heavenly temperament, that no feelings of the kind would be suffered to disturb their Christian frame of mind, and unfit them for that

holy sacrifice. But those men are few; to the generality it would spread a snare.

This practice, however, of receiving the Sacrament as an oath was very common. The usual form of words spoken by the individual who thus appealed to Heaven was, "May the body of the Lord be my witness to-day." History records too many instances of the shocking prostitution of that most holy rite, sanctioned not only by the highest authority of the Church of Rome in her commands, but by the personal example also of those who assumed to themselves the title of being infallible guides to Christendom. Thus Pope Adrian, about the year 870, called the young King Lotharius, and all his train, to receive the sacrament as a solemn oath, in words which it is quite revolting to our dearest religious associations with the sanctity and spiritual character of that holy ordinance to repeat:—"If thou hast abstained from intercourse with her who has been excommunicated by the Holy See, draw near with faith, and take the sacrament of eternal salvation for the forgiveness of your sins; but if not, dare not to approach." And, afterwards, he invited each of the followers present in the same manner, varying the words only to suit their case: "If thou hast not abetted Lotharius in this intercourse, the body and blood of our Lord Jesus Christ be profitable to thee to eternal life." A report was

industriously spread, that Lotharius and all his people, who, under these circumstances, took the sacrament, died; whilst even those, his abettors, who shuddered at the *curse and withdrew*, scarcely escaped with their lives*.

* Other instances of a similar proceeding are adduced by Du Cange, Art: "Eucharistia;" where see the authorities for this instance.

SECTION G.

ORDEAL OATHS.

PUFFENDORF supplies us with a good introduction to a Section on Ordeal Oaths. "As it is just and right," he says, "to pay the most religious reverence to oaths, so it is vain presumption to expect or desire that their truth or falsehood should be evinced by an immediate miracle; as if God were obliged to exercise his judicial office at the pleasure and humour of men. And yet this was a superstition which very much obtained of old, not only amongst the heathens, but in the ignorant and barbarous ages among Christians*."

Blackstone, with others of our writers, has given us the forms of trial by ordeal, and the oaths prescribed to the disputants. After expressing his astonishment at the folly and impiety evinced in such proceedings, he very justly says, that though in European countries, the custom most probably arose from an abuse of revealed religion, yet credulity and superstition will, in all ages, produce the same or similar effects. Various forms of such superstitious trials, closely resembling our ancient ordeal, are described as still extant in Candy, by the late Sir John

* Puffendorf, iv. 2.

D'Oyly in his *Sketch of the Constitution of the Kandyen Kingdom**. They are chiefly used in the case of a disputed right to a piece of land. Solemn oaths are first taken by both parties of their own right, and that they have not used enchantments. In many cases, should any misfortune after the taking of the oath and performing the ceremony, befall either of the parties or their friends, or their cattle, or their dwelling, judgment is forthwith given against that party. Should no misfortune follow to either after the rite, the land is divided. But all these impious ceremonies, and all others which the whole world can produce from the lowest depths of heathenism, are not so disgraceful to human nature, nor so shocking to our feelings, as were those prostitutions of what every Christian must hold sacred, which prevailed through Christendom, and were practised by men who had the word of God in their hands and upon their tongue, whilst the Gospel of truth was shining around them, and would have enlightened them, had not so thick a veil of ignorance and superstition shut out its heavenly beams from their understandings and their heart. It is painful to dwell on these subjects, but I believe it is profitable to contemplate them. Muratori has preserved the precise form of the judgment of cold water, with many others; whenever he makes any observations of his own, they show a sensible and a candid mind. "This

* Trans. Roy. Asiatic Soc., vol. iii. part 2.

is the true judgment by cold water, which St. Eugene and Pope Leo and the Emperor Charles commanded all bishops, abbots, and earls to hold and believe."

"Take those men whom you wish to cast into the water, and conduct them to the church before all; and let the priest sing the mass, and he will make those men offer at the mass. But when they come to the communion, before they communicate, let the priest interrogate each with this adjuration; —'I adjure you, O men! by the Father, Son, and Holy Ghost, by the true Christian faith which you profess, and by the only begotten Son of God, and the Holy Trinity, and by the Holy Gospel, and by those relics that are in this church, that you by no means presume to communicate, nor approach this holy altar, if you have done this thing, or have consented and know what men have done it.' If the men are silent, then let the priest approach the altar and give the communion to all whom he is to cast into the water; whilst they are receiving the communion let the priest say to each severally, 'Be this body and this blood of our Lord Jesus Christ received by you as a proof this day*' [of your guilt

* Muratori directs our attention to the fact, which is well worthy of our observation, that this form must have had its origin in early days, before the use of the cup in the Sacrament was, by the order of the church of Rome, taken away from the laity.

or innocence]. Having finished the mass, let the priest himself prepare holy water, and let him take that water, and let them go to the place where the men are to undergo the trial,—and there let him give to them all some of the above-named holy water, and say to each,—‘This is holy water, be it to thee a test of thy faith.’ Afterwards let the priest conjure* the water into which he is to cast them,—‘I adjure and bless thee, O water! in the name of God the Father Almighty, who in the beginning created thee, and ordered thee to minister to the wants of men; who also ordered thee to be separated from the waters above. I adjure thee also by the ineffable name of our Lord Jesus Christ, Son of Almighty God, under whose feet the sea, by the element of water, offered itself to be trodden; who also willed himself to be baptized in the element of water. I adjure thee, also, by the Holy Ghost, at whose will the sea was divided, and the people of Israel passed through it dry-shod; at whose invocation Elias made the iron which had fallen from the handle swim upon the water,—That thou wilt by no means receive these men, if they are in any point of these [charges] guilty, either by deed, or consent, or knowledge, or device, but wilt make them swim upon thee, so that there be no

* I think it is quite evident that the words “to conjure, conjurors,” &c. were derived from these superstitious practices.

cause nor any enchantment which may not bring them to light. Obey, I adjure thee by his name, whom every creature serves; whom Cherubim and Seraphim praise, saying, Holy, Holy, Holy, Lord God of Hosts, who also reigns for ever and ever:—Amen.’ Also, after the conjuring of the water, let him take hold of the men who are to enter upon the trial,—let him strip them of their garments, and compel each to kiss the holy Gospel, and the cross of Christ. Afterwards let this adjuration be given to each, ‘I adjure thee, O man; by the invocation of our Lord Jesus Christ, and by the judgment of cold water. I adjure thee by Father, Son, and Holy Ghost, and the undivided Trinity, and by our Lord Jesus Christ, and by all angels and archangels, and by the dreadful day of doom, and by the four-and-twenty elders who praise God daily, and by the four evangelists, Matthew, Mark, Luke, and John; and by the twelve apostles, and by all the saints of God, by martyrs, confessors, and virgins, principalities and powers, dominations and virtues, and by Thrones, Cherubin and Seraphin, and all the secret things of heaven, and by the three children, Shadrach, Mesach, and Abdenago, who daily praise God, and by the hundred and forty-four thousand who have suffered for the name of Christ; and by Mary, the mother of our Lord; and by all the holy people of God; and by that baptism with which the priest regenerated thee—I adjure thee, that

if thou knowest of this theft, or hast heard of it, or carried it [the stolen thing] away, or received it into thy house, or were consenting and agreeing, or if thou hast a heart hardened and waxed gross, or art guilty, that thy heart vanish, and that the water receive thee not. And let nothing evil prevail against this, through," &c. The prayer—"Wherefore we earnestly beseech thee, O Lord Jesus Christ, give such a sign that, if this man is guilty, he be in no wise received into the water. Grant this for the praise, and glory, and adoration of thy name, that all may know that thou art the blessed God, who livest and reignest world without end. Amen.' Then let the priest take of the holy water and sprinkle every one of them, and immediately cast them into the water."

Muratori tells us that many of these forms were employed to detect heresies*. And he quotes from an ancient author an account of two suspected persons being brought to the trial of cold water, one of whom was saved, and the other condemned almost by the unanimous vote of those who witnessed it. At his own request, the latter was

* Proceedings equally unjustifiable were not confined to times of Popery. Though stript of its foolish superstitious garb, the practice of expurgation was for a time still retained among Protestants. The oath "ex officio," in the time of Queen Elizabeth, was employed for the same purpose. This oath was made illegal by Statute 13, C. ii., c. 12.

subjected to the trial a second time, and was not even in the least degree allowed to sink: being a second time condemned, he was sentenced to the flames. Muratori's account of the rope which was always fastened to the body, and by which the innocent person was saved from drowning when he sank, may afford no improbable solution of the phenomenon of those who did not sink. It was only to manage the matter so as not to give him enough rope, and yet deceive the bystanders. I cannot refrain from quoting one passage in our author's own words: "I pray pardon for myself, if I entertain a suspicion that this method of ascertaining the truth was invented by a cunning rather than by a wise man, in order that, by an experiment not very hazardous, under the appearance of divine revelation, some wicked man might be rescued from punishment, and that it might be considered as a proof of his innocence, that the water would receive him into its bosom and not sustain him on its back. Men in those ages must have been very ignorant, and have laboured under a strange credulity, when, to discover the truth, they regarded it as a voice from heaven, that a *tolerably weighty fellow* * should sink in water."

The forms for conjuring the bread and cheese in what our Saxon fathers called the Corsned, are equally impious, and, could the prostitution of the

* "Bene ponderosum."

most sacred name, and of the most holy institutions admit of any other than serious and sorrowful thoughts, would border upon the ludicrous. Grateful as every reflecting mind must be for that happy change which has been effected in our country since those times of darkness; acknowledging with thankful hearts our deliverance from those bonds of superstition which then enchained Christendom, we must, nevertheless, not acquiesce in our present advanced state, whether of religious knowledge or of civilization, as though it could admit of no further improvement. These superstitions have neither place nor name among us; but we ought to show our gratitude by joining hand and heart in promoting a steady, gradual, constant progress from good to better. As in the moral and religious government of our own minds and heart, so in the cultivation of the great field of society, we must be advancing, or we shall be retrograding; and with many others, whose station and talents will deservedly cause their sentiments to be heard, where I could not, without presumption, expect mine to reach, I am deeply impressed with the conviction that our practice with regard to oaths, is susceptible of very great improvement indeed, and that the serious attention of our legislature to the subject is loudly called for.

SECTION H.

OATHS BY PROXY.

A VERY extraordinary custom prevailed in many courts of Christendom, where the sovereign never took an oath in his own person; but whenever it was necessary for his promise to be confirmed by his oath, his courtiers, or his ambassadors, swore in his name and in his stead. There are many curious instances of this custom preserved in history. For example, Tillet (often quoted as Tilius), among other instances records that when St. Louis of France made a treaty with Henry the Third of England, in the year 1231, the prior of St. Martin's in the Fields, [Le prieur St. Martin des Champs] swore to the treaty in the presence of Louis, and on the soul of Louis. The oath was sworn for Henry in his presence, by one Ralph [Roul filz de Nicole son seneschal.] So too Isabella, sister of Henry the Third, was betrothed to the Emperor Frederic by proxy, the ambassadors swearing on the soul of the Emperor, and on his part offering to her the espousal-ring*. It is said that the kings of France never took their oath in their own persons but once, at their inauguration;

* Tillet, *Recueil des Traictez*, ii. 11.

on all other occasions, they swore by proxy, or promised on their royal word.

William, King of Sicily, in settling with King Henry the Second of England a treaty of marriage with his daughter, refused to take an oath personally, alleging that it was contrary to the custom; and asserting that an oath sworn by others, in his presence, and on his soul, was equally binding*.

Thus, too, by the laws of Germany, either party in a suit was allowed to swear by his proctor, a custom (as Heineccius explains it) originating in the religious scruples of ecclesiastics who substituted others to swear on their souls†. This practice was followed by laymen, at first the more noble, at last the common people, so that the custom obtained generally of a proctor swearing by the soul of his client. But, adds Heineccius, implying his disapprobation of such want of gallantry in those middle ages, this privilege was positively forbidden to women.

The practice of swearing in the name, and at the peril of another, was very common in England formerly. In the Register of the Garter‡, we have the oath recorded which was to be taken by any one chosen into that illustrious body, "sworn by his proctor." It is couched in these words: "I,

* See Du Cange, "Jurare in animam alterius."

† Hein. El. Jur. Ger. T. 219.

‡ 1724.

A. B., knight and proctor of the renowned prince (arch-duke, duke, marquess, earl, viscount, baron, lord, or at least knight) now of late nominated and elected to the most famous Society of the Order of St. George, on the behalf and in the name of my said master, with a true heart and in entire faith, do promise and swear, that my said master shall well and faithfully observe and perform the statutes of this order, and all the articles of them, according to the import, form, and effect of them, at least so far as the dispensation of the sovereign shall moderate and declare.”

It is not generally known that this oath by proxy is still retained in some of our ecclesiastical courts in England*. It has long been disused, with many others, in Doctors' Commons. Is it reasonably retained any where? The following is the form as observed in the ecclesiastical court of Hereford within the last seven years.

A form of exhibiting answers by virtue of a special proxy through a syndic:—

“1st. I exhibit my special proxy for the mayor, &c., and I do it on my own part for the same body; and, in the name of my employers, I answer and believe in all things, and by all things, as to

* I was not aware, till this section had been sent to the press, that the form of an Oath by Proxy is still retained at Cambridge, “when a Master of Arts is created by proxy.”
“Jurabis in animam Magistri A.B., &c.”

what is contained in the words of this my special proxy.

“2nd. And I swear by the soul of this my same employer, and by the sacred Gospel of God, that the answer is true according to the information of my employer, and the belief of my proxy, in those things which concern the matter in question in regard to the corporation, and concerning the knowledge of this, my same employer, in the things which concern the matter in question concerning myself.”

This oath was taken in 1827, by a professional gentleman of my acquaintance. How far this custom, originating in superstition, and continued in ignorance, deserves to be authoritatively put down in a Christian protestant country, I trust will soon be made a subject, with many others, of serious and dispassionate inquiry. It is painful, though curious, to find every where, under some disguise or other, so many heathen customs prevalent among us. Heineccius tells us that the custom of swearing by proxy in Germany, originated in the scruples of ecclesiastics, but we have traces of it in high heathen antiquity. Xenophon, for example, supplies a precedent when he records the proposition of the Thebans to swear in the name of all the Bœotians*. Indeed it was the usual practice of the representatives of the different

* Xen. Hellen. lib. v., c. 1.

states to swear to a treaty in the name of their employers and masters. The fifth book of Thucydides (as well as other historical remains,) abounds with instances.

I have recollected a passage in Livy, which was not present to my mind when this chapter was first written, but which bears so strongly on the point before us, and throws so much light on the practice, that I cannot persuade myself to omit it altogether. It was about two hundred years before Christ, that C. Valerius Flaccus was elected edile; but because he was Flamen Dialis, or priest of Jupiter, he could not take the oaths of office; and no magistrate elect could carry on the duties of his office for more than five days without taking those oaths. When Flaccus applied for a dispensation, the senate decreed that, if the edile would find an approved substitute to take the oath in his stead, the consuls, if they should see fit, might negotiate with the tribunes the matter of an appeal to the people. Lucius, the edile's brother, was nominated as his brother's proxy, and the people passed an order, that it should stand just as if the edile had sworn in his own person*.

* Scivit ut perinde esset ac si ipse ædilis jurasset.—
Liv. xxxi. 50.

SECTION I.

THE OATH OF HAROLD.

HISTORY records many remarkable instances of the superstition with which oaths were sometimes taken on relics. One, which is represented in our frontispiece, is by no means among the least interesting; whilst it tends to confirm what is constantly forcing itself upon our mind, that all attempts to make the religious obligation more binding, whether by the multiplication of oaths, or by adding to the superstitious circumstances attending them, are baffled entirely when the principle of upright dealing is absent. The guilt of the perjurer may, indeed, be enhanced, just as a person who wilfully repeats again and again a bare falsehood may be considered guilty of more deliberate sin; but the value of the pledge is not proportionably increased. The scene represented in the frontispiece is taken from the Bayeux tapestry, a very extraordinary production, describing successive events in Harold's and William's career; and, not without a considerable degree of probability, referred to the skill and industry of the Conqueror's queen. It is still preserved in the cathedral of Bayeux, in Normandy.

I copy the following description of the piece from TURNER'S *History of the Anglo Saxons*. "William appears without armour, on his throne, with a sword in his left hand extended. Near this are two repositories of relics: Harold is between them, with a hand on each." [In this particular, I cannot help thinking that Mr. Turner is mistaken. The case next William, on which is Harold's right hand, is, I think, undoubtedly a repository of relics. Two handles, projecting at each end, seem to imply that it was a moveable case. But that on which Harold's left hand is laid, is, I think, an altar: there are, apparently, steps at its base, whilst it has no handles. And this would correspond more exactly and literally, I think, with the account in the *Roman de Rou.*] "The inscription is, 'HERE HAROLD SWEARS TO DUKE WILLIAM.' The historians state that Harold swore to promote William's accession to the throne of England, on Edmund's [he means Edward's] death; to marry his daughter; and to put Dover into his power. Some other authorities mention that William, after Harold had sworn, uncovered the repositories, and showed him on what relics he had pledged himself: and Harold saw with alarm their number and importance. If this be true, these two great warriors were, at least in their religion, men of petty minds; or they would not have believed

that the obligation of an oath was governed by the rules of arithmetical progression*."

The authority on which this circumstance of William's cunning, and Harold's superstitious horror, chiefly rest, is that of the *Roman de Rou*, written, as we are told, by Robert Waice, who lived about fifty years after the Conquest, and was canon of Bayeux. Probably, the insertion of so much of the *Roman de Rou* as explains this transaction will not be unacceptable. I have given, also, a verbal translation, the old French being, in many parts, obscure, and difficult to interpret without the help of annotations.

Co se li plaist li jurera	And if he pleased he would swear to this,
Et Willame le graanta.	And William consented.
Por rechoivre cest serment	To receive this oath
Fist assembler un Parlement	He called a parliament ;
A Baieux (go solent dire)	At Bayeux (so they say)
Fist assembler un grant concire	He convened a great council.
Toz li corz saintz fist demander	He called for all the relics (<i>the holy bodies</i>)
Et en un liu tuz assembler	And collected them into one place ;
Tut une cuve en fist emplir	He filled a whole coffer full of them,
Pois d'un paele les fist covrir.	He had them covered with a pall,
Ke Heraut ne sout, ne ne vit	That Harold might neither know nor see,
Ne ne li fust mostre, ne dit.	Nor was it shown or told to him ;

* All the historians represent Harold as having pledged his solemn oath to William. Rapin says, "He made him swear on the Gospels," but this, probably, is a mistake, for Simeon of Durham, to whom he refers, expressly mentions the relics. Henry of Huntingdon affirms, that "he swore upon many and most choice relics of the saints;" but he does not add, that William deceived him into a more awful oath than he thought for: nor does either Brompton, or Ingulphus, or William of Malmesbury, or Simeon of Durham.

De suz out une filatire *
 Tut li meillor k'il pout eslire
 E li plus chier k'il pout trover
 "Oil de boef" l'ai oi nomer
 Quant Heraut suz sa main tendi
 La main trembla, la char fremi
 Poiz a juré et a promi
 Si come home ki eschari
 Ele la fille al Duc prendra
 Et Engleterre al Duc rendra
 De ço li fera son poeir
 Sulunc sa force e son saveir.
 Empres la mort Ewart s'il vit
 Si veirement Dex li äit
 E li corz sainz ki iloc sont
 Plusors dient: "Ke Des li dont."
 Quant Heraut out li sainz beisiez
 Et il fut suz levez en piez
 Verz la cuve li Duc le trait
 E lez rave cuve ester le fait
 De la cuve a le paesle ostè
 Ki lut aveit acoueté
 A Heraut a dedenz monstra
 Sor kels cors sainz il a juré
 Heraut forment s'espoanta
 Des relikes k'il li monstra

Above there was a Reliquary,
 The very best he could choose,
 And the dearest he could find,
 I have heard it called "The Bull's Eye."
 When Harold held his hand over it,
 His hand trembled, his body shuddered,
 Then he swore and promised,
 As a man upon his oath,
 He would take Ela, the Duke's daughter,
 And deliver England to the Duke.
 Of this he would do his power
 According to his might and knowledge,
 After the death of Edward, should he live,
 So truly may God him help,
 And the holy relics which are there.
 Many say, "God grant it him."
 When Harold had kissed the relics
 And was risen on his feet,
 The Duke led him towards the chest,
 And made him stay by the chest.
 From the chest he took the pall
 Which had concealed all,
 To Harold he then showed
 On what relics he had sworn;
 Harold was sadly alarmed
 At the relics he showed him, &c.

* Une filatire, philacterium; a philactery.

SECTION K.

OATH OF WILLIAM RUFUS.

OUR English chroniclers represent William Rufus, on every occasion on which he used strong language, as employing an oath, "By St. Luke's face." Rapin and others call it his favourite oath. This is a very curious mistake, originating in a mistranslation of the Latin phrase of some ancient historian, probably Eadmer, or William of Malmesbury. "He swore," say they, "per vultum de Lucca," by the face of, or at Lucca, without the shadow of a reference to the Evangelist. The inquiry into this curious fact opens a passage of English history more fully than it is usually presented to us, and leads us to matter also of general interest; a circumstance which, I trust, may suggest a sufficient apology for this digression.

William the Second was a very headstrong and irreligious man, reckless of Providence, with ungovernable passions, self-willed, blind to danger, and regardless of duty. On one occasion of his employing the oath in question, these qualities showed themselves so prominently, and they so clearly develope the character of the man, that I take leave to insert the narrative more at length

than the bare explanation of his oath might require*. The king was in the full enjoyment of a hunting-party when a messenger, from beyond sea, brought him tidings that a town which had lately fallen into his hands was besieged by the enemy. Instantly, equipped as he was for the chase, he turned his horse's head, and made for the sea. On his attendants' suggesting the propriety of waiting till his forces could be collected and marshalled, he scornfully replied, "I shall see who will follow me. Think ye I shall not have an army?" He arrived at the coast almost alone. The wind was contrary, the weather stormy, and the sea in dreadful agitation. Resolved to pass over at the moment, when the mariners remonstrated and implored him to wait for a less foul sea and sky, he exclaimed impetuously, "I never yet heard of a king perishing by shipwreck; loose the cables, I say, instantly. You shall see the elements conspire in their obsequiousness to me." William crossed in safety, and the first rumour of his landing scattered the besiegers. A leading man among them, one Helias (the Earl of Flesche, his competitor for the Earldom of Maine), was taken prisoner, and brought before the king, who saluted him with a jeer, "I have you, master." To this his high-minded captive (whom as the historian remarks, his imminent danger could not teach pru-

* Eadmer, i., 124.

dence or humble language,) replied, "It was by mere chance you took me; if I could escape, I know what I would do." Upon this William, almost beside himself with rage and fury, *clenching his fist* at Helias, exclaimed, "You rascal! What would you do? Begone! away! fly!" and "By the *face of Lucca* (*per vultum de Lucca*) if you conquer me, I will make no terms with you for this free pardon*."

THE FACE OF LUCCA.

IN consequence of different legends of "The Holy Face" existing in the Church of Rome, I was for some time under a mistake as to the real origin of this oath. "The Face of Lucca," however, by which William swore, was undoubtedly a crucifix in that town. Butler in a note, on the life of *St. Veronica of Milan*, calls it a very ancient *miraculous* crucifix, in the Chapel of the Holy Cross in the Cathedral dedicated to St. Martin. Lord Lyttelton says, "There is at Lucca, in Tuscany, an ancient figure of Christ brought there

* I know not whether I have given the correct translation of the historian's own words, "Obuncans Heliam." The word is not classical, nor do I remember to have met with it elsewhere. "Obuncis pedibus" is a classical expression, used by Ovid, for the clenched talons of an eagle. I have, therefore, conjectured that the writer's meaning was as I have expressed it. Perhaps it means seizing, grasping, clenching Helias. Another interpretation is, "beckoning to him with his finger."

miraculously, as they pretend, and which they say still continues to work miracles. They call it “Il santo volto di Lucca,” and are so proud of possessing it, that it is stamped on their coin with this legend, ‘Sanctus vultus de Luca.’” In an Italian book published in 1721, called “*Il Forestiere informato delle cose di Lucca*,” the legend is given in detail at great length, with much pomp of circumstance. The author calls it the Holy Cross, and says it is the Image of Jesus crucified. He tells us it was made in consequence of a miraculous command given to the Nicodemus of the Gospel to go to *mount Cedron*, and carve that image; where he formed it under the immediate guidance of heaven, “Con arte divina e non sua.” An angel long afterwards, by a new miracle, commanded the Bishop of Lucca, to go with all his clergy to Porto di Luni, whither it had been miraculously transported from the Holy Land, and to bring so vast an acquisition to their own city: and after stating that Nicodemus had enclosed in it many precious relics, which had been handled by the Most Holy Virgin; he further adds, “that as the first Christians devoutly worshipped it, he is not deceived, who believes that it was also adored even by the Holy Virgin herself, and by our dear St. Paul, by St. Peter the Head of the Church, and by all the Apostles and Disciples who were stationed together there.”

There are two very curious passages in Dante, which refer to the superstitious veneration paid to this image. A sinner from Lucca is represented, by the poet*, as thrown into a sea of boiling pitch, where he tumbles and rolls over and over, in the dreadful flood, like a porpoise, to intimate that when on earth he would duck down and throw himself into the same posture, with his forehead on the ground, before the image of Lucca; when he is assured, in his torments, by his triumphant foe, that his reliance on that relic would avail him nothing:—

“ Here hath the holy countenance no place.”

An oath very similar to this of William,—“ By the Holy Face,”—is used to the present day in Spain, especially in Valencia. Its origin is found in one of the most engaging and affecting, but not on that account less unfounded legends of the church of Rome. How very prone are men of all ages to do evil that good may come, to invent or propagate what is not true, with a view of securing some desirable end! How much are Christians, of every age, in need of being warned against attempting to spread or uphold the truth by unhallowed means! Pious frauds, though often sanctioned on earth, offer a direct insult to the majesty of the God of truth and justice. We may be sure he abominates a falsehood, even when the man who has

* Compare Dante *Inferno*, xxi. 49., with xxii. 19.

forged it thinks he utters it in the service of God ; and we may be equally sure that if we cannot compass an end in any department of religion, or morality, or civil government, without relinquishing the very truth, that circumstance is of itself an intimation, as plain as if it were spoken by the tongue of an inspired prophet, that the specific object, however desirable, is not intended by Providence to be brought about by such means of ours, and that it is presumption and sin in us to attempt it. Many of the Romish legends sprang unhappily from less worthy motives than mistaken zeal for the Gospel, and we can only lament the depravity which would employ the religion of Jesus as an instrument for compassing selfish, ambitious and worldly objects. And even when we are required, in charity, to refer the invention of a legend to a well-intentioned but misguided zeal, however the imagination may be pleased, and our interest excited by the narrative, no sooner do we reflect upon it as an unhallowed auxiliary to the word of the Eternal and Omnipotent One, than we turn from it in shame, and pain, and sorrow. Such is the "Legend of the Holy Face." As our blessed Lord, so runs the tale, was bearing his cross towards Calvary, overwhelmed by the weight which pressed his soul, and bent his body to the earth, he stumbled three times. In Spain there are prints representing this affecting scene, and

called, "The three Falls." On one of these moments of anguish, a female from Verona, with an affectionate desire to relieve his suffering, wiped his face with a handkerchief, thrice folded: an exact image of his countenance was left impressed on each of the three folds. One of these the people in Valencia pretend to be still kept in a cathedral of their own, exhibiting it on certain holy days with much ceremonial solemnity. And by this "holy face" they swear*.

* There are various discrepancies in the details of this legend. Whilst some persons assure us that the etymology of Veronica from *Vera Iconica* is an after-thought, not worth notice, and that the most correct legend represents the female as having been a virgin from Verona, others consider this latter account as totally erroneous, having its origin only in an ignorant confusion of names and circumstances. I believe, however, it is very current in Spain. I have thought it best to add the note of Mr. Butler; "St. Veronica of Milan, 1497. The print of the holy face of our Saviour on a linen cloth is kept at St. Peter's church at Rome, with singular veneration. It is mentioned in an ancient ceremonial of that Church, 1143. It was called Veronica, or true image of our Lord's face, from *Vera* and *Iconica*, the word used by St. Gregory of Tours, from the Greek word *Icon*. Some moderns imagine, that it served at the burial of our Lord; others say, that a devout woman wiped his face with it, when he was fainting under the load of his cross going to Calvary. In some particular missals, as in that of Mentz, 1493, among the votive masses is one, 'De sancta Veronica seu Vultu Domini,' in the same manner as there is a mass 'On the Cross.' Such devotions are directed to honour our Lord with a remembrance of this relic, memorial, or pledge. From this office of the Veronica is taken an anthem and prayer which are said in some

private churches, as a commemoration of the Holy Face of Lucca, which is a very ancient crucifix in the Chapel of the Holy Cross in the Cathedral dedicated to St. Martin at Lucca. A copy of the true Veronica is kept in the Cister-tian Nunnery at Montreuil, a present of Urban IV., to this house; his sister being nun there, 1249. Some private writers and churches have given the name of St. Veronica to the devout woman who is said to have presented this linen cloth to our divine Redeemer, but without sufficient authority."

SECTION L.

OATHS OF OFFICE.

IT must be confessed that promissory oaths, of all kinds, and oaths of office in particular, have the countenance of a very remote antiquity; though, as it appears from a curious passage in the Politics of Aristotle*, in the earliest times, whilst their kings were sworn in some states to be faithful in their high trust, other states dispensed with the oath. Indeed I can entertain no doubt that the words in the original, though differently interpreted, rather imply that it was only in their character of *judges* they were sworn. The philosopher's words are these: "The kings had sovereign authority as to the conduct of wars, and as to all such sacrifices as did not appertain exclusively to the priesthood; and besides these duties they sate as judges in trials; *and this* they did, some on oath, and others not on oath. Their form of oath was the lifting up of the sceptre."

Judges in early times always swore to discharge the duties of their office without fear or favour: we have, at least, so large a number and variety of individual instances, as would authorize us to draw

* Arist. Pol. iii. 10.

that conclusion almost universally. Pollux records the oath of the judges of Athens, after their election, which was, that they would give judgment according to the laws in those cases on which laws existed, and in cases not determined by law, they would give the most righteous judgment*. The Archons' oath is also preserved. It ran thus, that "They would observe the laws and administer justice without partiality; would never be corrupted by bribes, or if they were, (for they were allowed this alternative,) they would dedicate a statue of gold to the Delphian Apollo." This oath they first took in the royal portico, and again repeated it in the Acropolis.

In Rome, also, we find that the public officers were admitted to their station with an oath. We have referred to the case of the consuls, and others, before, and we need not cite more instances. I believe we may assume it as a fact that, in Athens and in Rome, oaths of office were generally required. There are passages which seem to intimate, more or less clearly, that judges not only took their oath of office on their appointment, but also repeated it, in the most solemn manner, at the very time of their giving sentence. Clement† (or rather the writer whose work is improperly assigned

* Pollux, lib. viii. c. 9 and 10.

† Clem. lib. ii. De Constitut. Apost. c. 62.

to Clement of Rome,) in urging upon Christians their imperative duty, dwells upon the care and painful anxiety shown by the judges of this world in pursuing their examination into the truth, and refers to the custom of the judge, before pronouncing sentence of death, lifting up his hands towards the sun, and testifying that he is innocent of the criminal's blood. Seneca* tells us distinctly that, when on the point of passing sentence, they swore that they gave nothing for favour or entreaty.

Among the laws of Lombardy one provides that the oath of a judge shall bind him to do justice to the utmost of his skill and understanding, and neither to pervert nor defer justice for any reward or human favour.

In the curious little book before referred to, entitled "The Pleasant History of the Conquest of the West India, now called New Spain, translated out of the Spanish Tongue by T. N., anno 1578," among other ceremonies observed at 'the coronation of the kings of Mexico,' we find the following: "Upon his, the new king's, left arm they bound a little bag of incense, and then brought unto him a chaffing-dish of embers made of the bark of an oak-tree. Then the king arose, and with his own hand threw of the same incense into the chaffing-dish, and with great reverence brought the same unto

* Seneca, Controv. ix. 2.

the God Vitzilopuchtli, and after he had smoked him therewith he sate him down. Then came the High-Priest and took of him his oath to maintain the religion of the Gods, to keep also all the laws and customs of his predecessors, to maintain justice, and not to agraviate (oppress) any of his vassals or subjects, and that he should be valiant in the wars, *that he should cause the sun to give his light, the clouds to yield rain, the rivers to run, and the earth to bring forth all kind of grain, fruits, and other needful herbs and trees.*" These and many other impossible things the new king did swear to perform, and then he gave thanks to the High-Priest and commended himself to the gods. Then all the people cried, "The gods preserve the new king."

There is a very curious oath on record, which Frederic the Second, in the year 1221, compelled all advocates to take. The law is couched in these terms* :—"We will that the advocates to be appointed, as well in our court as before the justices and bailiffs of the provinces, before entering upon their office, shall take their corporal oath on the Gospels, that the parties whose cause they have undertaken they will, with all good faith and truth, without any tergiversation, succour; nor will they allege any thing against their sound conscience; nor will they undertake desperate causes: and, should

* Constitution of Naples and Sicily, b. i. c. 82.

they have been induced, by misrepresentation and the colouring of the party to undertake a cause which, in the progress of the suit, shall appear to them, in fact or law, unjust, they will forthwith abandon it. Liberty is not to be granted to the abandoned party to have recourse to another advocate. They shall also swear that, in the progress of the suit, they will not require an additional fee, nor on the part of the suit enter into any compact; which oath it shall not be sufficient for them to swear once only, but they shall renew it every year before the officer of justice. And if any advocate shall attempt to contravene the aforesaid form of oath in any cause, great or small, he shall be removed from his office, with the brand of perpetual infamy, and pay three pounds of the purest gold into our treasury."

The next law forbids a barrister to require more for his services than one-sixtieth part of the sum in dispute, if that can be estimated; if not, as in criminal cases, the quantum of fee to be fixed at the discretion of the judge.

Though it does not bear upon the immediate subject of our inquiry, I shall be excused in citing a law of Charlemagne, which I accidentally found when in quest of these oaths; it is preserved in Muratori, whose observations are, as usual, not devoid of interest. By that law it is enacted, that "the judges should hear and determine all causes fasting, and that the Earl shall not hold his court

except fasting." "Whether," says Muratori, "Bacchus was held in great honour by the Germans at that time, as he is in ours, I leave others to inquire. At least it is evident from these laws, that in the age of Charlemagne, both the Franks, who were the rulers, and the Lombards, who were their subjects, both nations that had migrated from Germany into Italy, indulged in wine with no moderation or sobriety, so that that celebrated emperor deemed it necessary to forbid afternoon trials, and with all possible care to banish intoxication from the courts of justice."

SECTION M.

MILITARY OATHS.

IN Greece, we are told that the Athenian youth were compelled to take an oath that they would bear arms for their country whenever their services were needed; and that the oath, when they were enrolled, was to this effect,—“That they would not disgrace their arms, nor desert their ranks, nor injure their country, but would defend it to their power, and would, whether alone or with their fellows, fight for their religion and the state: that they would hand down their country to those who came after them, not less than they received it, of whatever magnitude, but greater and better. That they would obey the magistrates, and observe the laws already in force, or afterwards to be constitutionally enacted; nor would they allow any one to destroy or disobey them: finally, that they would be faithful to the religion of their country*.” The oath closes with “Be the Gods my witnesses in this.”

In Rome there was a distinction generally recognised between the earlier military oath called *Sacramentum*, and the oath *Jusjurandum*, by

* Stobæus, xli.

which the soldiers were afterwards bound*. As far as I have ever been able to ascertain the point, the first military oath was voluntary, and bound them to obey their officers, and execute their commands to the utmost of their power: and when the camp was formed they swore not to appropriate to themselves any of the spoil, or any property belonging to the camp. Afterwards, a great variety of oaths were administered, as the circumstances of the time seemed to require. They appear to have been multiplied in number, and to have embraced a much more comprehensive promise under the emperors than during the republic.

The military oath under the Cæsars bears a very close resemblance to that sworn by Knights of the Bath. The Roman warrior was sworn to “value the safety of Cæsar above all things.” The English knight was thus bound†,—“You shall love your sovereign above all earthly creatures, and for your sovereign and your sovereign’s rights and dignity live and die.” Caligula compelled his soldiers to add, “I hold neither myself nor my children dearer to me than Caius and his sisters‡.” The soldiers of Julian took an oath, their swords held to their throats, that they would endure every thing for

* See Polybius, vi. 21, and Livy, xxii. 38.

† Stow’s *Annals*, 30th May, 1610.

‡ Suetonius, Cal. xv.

him, even till they shed their blood, should necessity require it*.

Christian soldiers took the military oath, swearing, as Vegetius tells us, by God and Christ, and the Holy Spirit, and by the majesty of the emperor, which, next to God, is to be loved and revered by the human race†. The same passage which acquaints us with that fact, mentions a circumstance, which, I am induced to think, has been misunderstood. He says, the enrolled soldiers, after figures had been drawn with the point of a needle in their skin, took the oath. Potter and Harwood understand this to have been nothing less than the branded mark stamped on runaways. I have little evidence to support my own opinion, though there is more than enough to overthrow theirs; and I offer mine merely as a conjecture. I cannot help thinking that the pictures which these Christian soldiers wore in their skin were representations of the Crucifixion, or at least of some person or thing which reminded them that though they were enlisted to fight the battles of an earthly king, yet that they were the sworn soldiers of Christ. We know that the crucifix is very commonly seen now on the arms and breasts of our own soldiers and sailors.

The oath given at the creation of Knights of the

* Ammianus Marcellinus, xxi., c. 5.

† Veget., ii. c. 5.

Bath*, to every new knight, is curious in itself and in its circumstances. Of course it savours of a military, rather than a civil oath: "The Officers of Arms brought them up (the new knights) six at a time, the seniors first, and, having made three reverences†, Garter read the ensuing oath or admonition; and Norroy held the book and gave it them to kiss."

"Right dear Brethren! Great worship be this noble order unto every of you. You shall love and dread God above all things. You shall be stedfast in the faith of Christ. You shall love the king your sovereign lord, and him and his right defend to your power. You shall defend widows, maydens, and orphans in their right. You shall suffer no extortion as far as you may, nor sit in a place where any wrongful judgment shall be given, to your knowledge. And of as great honour be this order unto you as ever it was to any of your kinne, progenitors, or others."

After the knighthood was conferred, the knights being put in order, the youngest foremost, between his esquire and his page behind him, they proceeded to the chapel, and there entered, two and two, making reverences; but because the chapel was not capacious enough, they all stood before their stalls,

* Anstis, 1725.

† To the altar.—Stow's *Annals*.

and, after solemn service and anthems, the six eldest were brought by the heralds, and offered their swords; the Bishop of London, Dean of the Chapel, receiving them; and laying them on the altar, then gave the knights this admonition.

“By the oath which you have taken this day, I exhort and admonish you to use these swords to the glory of God and defence of the Gospel, to the maintenance of your sovereign’s right and honour, and to the upholding of justice and equity to your power, so help you God!” Which done they redeemed their swords with an angel of gold, and returned before their stalls, and stayed till all of them had done the same.

At the chapel-door, the King’s Master Cook, with a white apron, and chopping-knife in his hand, having a little table before him covered with a linen cloth, as they passed by, said thus unto them:—
“Gentlemen, you know what a great oath you have taken, which is to defend the Gospel, succour the widows and fatherless, right the wronged, &c., which if you perform and keep, it will be to your great honour; but if you break it, I must hack off your spurs from your heels, as unworthy of this dignity, which will be a great dishonour to you, which God forbid!”

Oaths of office have, I think, had very considerable importance attached to them, in all places wherever they have been required. In many

countries, all proceedings conducted under the superintendence, or by the instrumentality, of any one from whom at his entrance upon office the law requires this oath, are declared null and void to all intents and purposes, should the taking of the oath have been neglected. Thus, in France, so universally were all public functionaries bound to take the oaths of office, that (what seems to have excited the admiration of the French law-writers,) even Peers were not exempt. This point was tried at Paris in 1735, on the translation of the Bishop of Laon to the archiepiscopal see of Cambrai; and the law was not altered by the Revolution, but still remains in force the same as before*. In that country, however, it has been ruled (in 1807,) that the oath needs not necessarily be retaken on the removal of an officer from one place to another, though the acts of any functionary who has not taken the prescribed oath at all are null.

* *Répertoire de Jurisprudence.*

SECTION N.

CORPORAL OATHS.

IT was a matter of surprise to me, when I discovered the mistake into which such a man as Dr. Paley had been misled, on the interpretation of the phrase 'a corporal' oath. Like many others in different departments of literary research, he was betrayed by yielding too easily to one of those etymological temptations, the success of which is owing merely to the circumstance that they are new, and opposed to the more obvious and ordinary interpretation. His note is, "It is commonly thought that oaths are denominated corporal oaths, from the *bodily* action which accompanies them of laying the right hand upon a book containing the four Gospels. This opinion, however, appears to be a mistake, for the term is borrowed from the ancient usage of touching on these occasions the *corporale* or cloth which covered the consecrated elements." I am not aware from what source the archdeacon borrowed this ingenious piece of criticism, but I feel no hesitation in pronouncing that it is as unsound as it is ingenious. In the first place, I should say that the *corporale*, in Paley's interpretation of it, not to make a broader assertion than the subject requires,

was not used on these occasions, *more* than the cross, or the Bible, or the altar, or the relics. We might however, safely say, that if ever used, it was not used in any degree so frequently. In the next place, it is called, in Greek, a *bodily* oath*. It was opposed, I believe, to a mere declaration by word of mouth, and also to a mere written testimony, such as that of Athanasius above quoted, who says *in his letter* to Constantius, I hold forth my hand and call God to witness upon my soul. Thus, bishops and priests were forbidden to take a corporal oath, and were directed, simply to say every thing with purity and truth. In the fifth of Winchelsey's Constitutions, Priests are directed to swear on the holy books lying open on which they are to have their eyes fixed. Therefore, says Johnson, it is not a corporal oath, for the touching the book or relics made it corporal. Expressions, moreover, are constantly occurring in ancient writers, which admit of no other interpretation. Thus, "Touching *bodily* the holy Gospels, let them in public take upon them *bodily* the oaths†." I have taken more pains in ascertaining the true view of the case in this respect, because a friend of acknowledged talents and legal learning,

* Σωματικός ὅρκος. Thus σωματικαὶ ἡδοναὶ are αἱ τοῦ σώματος ἡδοναί. Arist. Eth., lib. 7. So Plutarch in Coriol, σωματικὴ ἀτυχία, meaning "a misfortune happening to the body."

† Tactis *corporaliter* sacrosanctis Evangeliiis in publico *corporaliter* subeant sacramenta.—Du Cange.

though he did not take precisely the same view with Paley, yet still did not consider the expression as meaning merely an external visible or tangible act. My friend's words are, "I consider the meaning of the words 'corporal oath' to be this; that it was formerly taken at the altar, where the consecrated elements were present; one of these elements, usually the first named, and always the first administered, being called *Corpus Christi*. And that the name of 'corporal oath' was retained after the oath had ceased to be taken in the presence of the consecrated elements." But my friend forgets, that it was called a "bodily oath," at the time when oaths, though often indeed sworn at the altar, yet were also sworn upon the evangelists, and the cross, without any immediate reference to the Eucharist.

Since I learned his view of the question, I have met with so many repeated confirmations of the meaning which I have attached to it, that not a shadow of doubt remains in my mind, that both the archdeacon and my friend are quite in error.

Brissonius for instance, when he gives an example of a corporal oath, (*jurisjurandi corporaliter præstiti*,) quotes a passage from an ancient dramatist* which I must translate verbally:—

G. Touch this altar of Venus!—*L.* I touch it.

G. By this Venus you must swear.—*L.* What shall I swear?

* Plautus, *Rudens*, Act v., sc. 2, v. 46.

G. What I bid you.—L. Dictate whatever you please.

G. Hold this altar.—L. I do hold it.

G. Swear then that you will give me the money.—

L. Be it so.

I am afraid of dwelling too long upon a point, which I am compelled to regard as no longer admitting of doubt; but page after page in the Roman laws might be brought to confirm the view which we have taken, and the use which the jurists made of the word is, I conceive, decisive. When they wish to express “bodily possession of a thing,” they use the word, “*corporalis possessio**.” When they would speak of real tangible material bodily pledges (as opposed to names and abstract rights) they say, “*corporalia pignora*.” And to mention no other name, Calvin of Heidelberg, who is excellent authority on these subjects, uses the expression of “swearing bodily†.”

I had prepared this chapter for the press, when the explanation of Coke first offered itself to my notice. “It is called a corporal oath, because *he toucheth with his hand* some part of the Holy Scripture‡.” This is evidently too narrow a definition of the meaning of the word, applying only as it does to our oaths in England. But the

* Digest. xiii., tit. vii., c. 40. Papinian. *Soluta pecunia, creditor possessionem pignoris quæ corporalis apud eum fuit, restituere debet.*

† Jurare corporaliter.

‡ Coke, 3 Instit. 74. [165.]

lifting up of the hand in Scotland and France, the kissing of the form of the cross in Spain, the casting of a piece of porcelain upon the ground in China, are each of them a genuine kind of corporal oath, just as much as our English form. But the author of the *Institutes** in his definitions, whether of an oath, or of perjury, or in other subordinate questions, confines himself to the English species of the thing which he defines. He would never otherwise have limited an oath to a Christian; nor could he, after evidently comprehending false-swearing within the meaning of the word perjury, have then limited his definition to the precise case which is punishable by our laws; nor would he in this case have confined a corporal oath to the prescribed form of taking it in England by Christians. He is right as far as he goes: and, as far as his authority goes, he establishes our view of the question.

I cannot persuade myself to omit here, a curious point of legal casuistry in the statement of which an expression occurs directly in point to our present question. In Italy, witnesses used to be sworn, as in our courts, before giving evidence, and *with their hands* upon the Gospels, (*Evangeliiis corporaliter tactis*.) It was seriously argued, that since the Gospels were to be touched by the *hand*, and not by the lips or elbow, a poor man who had lost both

* 3 Inst. 74. [164.]

hands, could not be sworn at all*. But the author who records the case, overrules the objection, and gives a form by which he might be sworn; "the judge is to admonish him to speak the truth, and he, calling upon the name of God, is to swear by God to speak the truth†." In the case of *Ramkissenseat v. Barker* (virtually the same with *Omychund v. Barker*), the Lord Chancellor who had directed commissions to administer in the most solemn manner such an oath to a Gentoo, as he would consider binding, is reported to have added "the words *Corporal oath*, may stand for lifting up an arm, or other *bodily* member" [as formerly the two fingers in Germany.] And upon the Attorney General suggesting, that there might be no ceremonies in their form of taking oaths, those words were left out, and the words "most solemnly" were to be inserted in their room. The Solicitor General Murray, in his argument on the same case says, after the Roman Emperors were converts, Christians as well as those who continued Pagans swore according to their fancy without any

* I was not before aware that Hogarth's inimitable picture of a contested election, could appeal to such high authority. At the election of the late Chancellor of Oxford, I witnessed myself a similar objection taken to a paralytic old gentleman's vote, who could not write without having his hand guided;—and all the votes must be taken in writing. The objection was indignantly overruled by the then Vice Chancellor.

† Bassano Theorico-Praxis.

particular form, and then he quotes the following passage from Selden (Selden tom. ii. f. 1467.) We omit here that, as is very evident from history, Christian Princes adopted solemn and peculiar oaths of their own, such as “By the Face of St. Luke,” (*per vultum Sancti Lucæ*) by this or that saint, by the foot of Christ, and other such, too many: at length the custom prevailed that as the Pagans used to swear either touching, or in the presence of, their sacred rites and mysteries, so the more solemn oaths were taken by Christians, either touching or inspecting the Gospels, or with the Gospels before them, laying their hand on their breast, or lifting it up, or stretching it forth. Such a one is said, moreover to have taken his personal or corporal oath, in contradistinction to an oath sworn in a letter, or in writing only.—Atkyns’s Reports v. i. s. 32.

ADDENDA.

NOTE ON PAGE 30.

“ BISHOPS and Priests were not allowed to take any oath.” It must be confessed that when we trace this subject carefully, with a view of ascertaining the time at which Ministers of the Christian Church were freed from the necessity of swearing to the truth of what they affirmed, and the extent to which such an immunity reached, the inquiry is surrounded by difficulties. Bingham (book v., c. 2,) asserts, that Bishops were not exempted from taking an oath before the time of Justinian, and that Priests did not enjoy that privilege before the Council of Tribur, many ages after. But I must (as far as my researches have hitherto enabled me to judge,) withhold my assent from the correctness of his inference. The Canon of the Council of Tribur seems to me, upon careful inspection, to be merely declaratory of a former law or custom. Besides it refers solely to disputes of *small moment*, in which a clerk and a layman are the litigant parties. Whilst there is on record, I conceive, very strong evidence, that the judgment of the Church had been for a long period at all events, if not from the earliest times after the

Apostolic age, pronounced against the practice of ecclesiastics taking an oath; and that the clergy had acted agreeably to that judgment. It is very probable that the imperial laws did not positively and formally embody that canon in their own enactments for many years. With regard to Bishops (and the reasons alleged apply equally to all ministers of the altar,) I cannot but regard the following passage of history, preserved among the undisputed records of the Christian Church, as affording powerful evidence on the point, against Bingham and in favour of the statement I have made in the previous chapter above referred to. "In the Council convened by Theodosius at Constantinople, A. D. 449, (nearly a century before the earliest period fixed upon by Bingham,) to examine the charge made by Eutyches, who alleged that the transactions of the Council in which he had been condemned were not honestly recorded, we read, that Macedonius brought forward the Holy Gospels, and desired the Bishops who had been present, to testify upon oath, whether the record was true; on which Basil, Bishop of Seleucia, answered "*Never up to this time* have we known an oath tendered to a Bishop. Each however, as standing before the altar of God, and having the fear of God before his eyes, and keeping his own conscience pure before God, must by no means omit to testify whatever he retains in his memory." The word

“hactenus” “ever up to this point,” seems to me, I acknowledge, to go far towards establishing the custom. See Van-Espen, vol. iii. 187.

IN this treatise, I have thought it neither necessary nor expedient to enter upon questions of casuistry no longer entertained. Many such, I am fully aware, are found in the records of former days, on points which a few grains of common sense and honest principle, would enable any one to decide satisfactorily and correctly for himself; but which used to be debated with far more animosity and warmth, than discretion and temper; and were pursued with much greater interest than was attached to principles of primary and essential importance. Among other points, I have not alluded to a question, for ages regarded as one of the chief subjects of inquiry and controversy—the power vested in the Pope of dispensing with oaths, however solemnly pledged. I know not whether the weakness or the wickedness of some positions formerly maintained on the subject of oaths, would be the more striking and offensive to enlightened Christians; and I have no wish to perpetuate the remembrance of them for an hour.

THE END.

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